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code of federal regulations

1986

Commerce and Foreign Trade

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PART 400 TO END
Revised as of January 1, 1986

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code of federal regulations

Commerce and Foreign Trade

15

PART 400 TO END

Revised as of January 1, 1986

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Table of Contents

Page

Explanation v

Title 15:

Subtitle B—Regulations Relating to Commerce and Foreign Trade (Continued):

Chapter IV—Foreign-Trade Zones Board 5

Chapter VI—Bureau of Industrial Economics, Department of Commerce 31

Chapter VIII—Bureau of Economic Analysis, Department of Commerce 35

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce 55

Chapter XII—United States Travel Service, Department of Commerce 417

Chapter XIII—East-West Foreign Trade Board 423

Chapter XIV—Minority Business Development Agency 425

Subtitle C—Regulations Relating to Foreign Trade Agreements:

Chapter XX—Office of the United States Trade Representative 431

Subtitle D—Regulations Relating to Telecommunications and Information:

Chapter XXIII—National Telecommunications and Information Administration, Department of Commerce 477

Finding Aids:

Table of CFR Titles and Chapters 499

Alphabetical List of Agencies Appearing in the CFR 513

List of CFR Sections Affected 521

Cite this Code **CFR**

thus: **15 CFR 400.100**

READEX
FICHE

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 15—Commerce and Foreign Trade is composed of three volumes. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

The first volume, containing Parts 0 to 299 includes regulations issued by the Office of the Secretary of Commerce, the Bureau of the Census, and the National Bureau of Standards. The second volume, containing Parts 300 to 399, includes the regulations of the International Trade Administration. The third volume, containing Part 400 to End, includes the remaining regulations codified under this title of the CFR relating to commerce and foreign trade, foreign trade agreements, and telecommunications.

For this volume Ina C. Masters was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 15—Commerce and Foreign Trade

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Part

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE (Continued):

CHAPTER IV—Foreign-Trade Zones Board 400
CHAPTER VI—Bureau of Industrial Economics, Department of Commerce 615
CHAPTER VIII—Bureau of Economic Analysis, Department of Commerce 802
CHAPTER IX—National Oceanic and Atmospheric Administration, Department of Commerce 902
CHAPTER XII—United States Travel Service, Department of Commerce 1200
CHAPTER XIII—East-West Foreign Trade Board 1300
CHAPTER XIV—Minority Business Development Agency ....

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS:

CHAPTER XX—Office of the United States Trade Representative 2001

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION:

CHAPTER XXIII—National Telecommunications and Information Administration, Department of Commerce 2301

Subtitle B—Regulations Relating to Commerce and Foreign Trade (Continued)

Subtitle B—Regulations Relating to Commerce and Foreign Trade (Continued)

CHAPTER IV—FOREIGN-TRADE ZONES BOARD

Part *Page*

400 General regulations governing foreign-trade zones in the United States, with rules of procedure....... 6

PART 400—GENERAL REGULATIONS GOVERNING FOREIGN-TRADE ZONES IN THE UNITED STATES, WITH RULES OF PROCEDURE

DEFINITIONS

Sec.
400.100 Act.
400.101 Zone.
400.102 Secretary of Commerce.
400.103 Board.
400.104 State.
400.105 Corporation.
400.106 Applicant.
400.107 Grantee.
400.108 District Director of Customs.
400.109 District Engineer.
400.110 Examiner.

JURISDICTION AND AUTHORITY OF BOARD

400.200 Duties of the Board.
400.201 Cooperation with other agencies.
400.202 Cooperation with Board of other agencies of the Government.
400.203 Executive Order No. 7104.

NUMBER AND LOCATION OF ZONES

400.300 Each port of entry entitled to at least one zone.
400.301 Port of entry located in more than one State entitled to a zone in each such State.
400.302 Zone may be authorized in each of two cities separated by water in one port of entry.
400.303 Additional zones in port of entry may be authorized by Board.
400.304 Zones for specialized purposes.

ECONOMIC, FINANCIAL, AND PHYSICAL REQUIREMENTS FOR ESTABLISHMENT OF ZONE

400.400 Economic survey of proposed zone.
400.401 Proof of ability of applicant adequately to finance zone.
400.402 Physical facilities required in the operation of a zone.
400.403 Construction and operation of equipment for segregation from customs territory and quarters for personnel.

ELIGIBLE APPLICANTS

400.500 Grants made to corporations.
400.501 Requirements for grant where harbor facilities owned and controlled by State and by municipality.
400.502 Act of State legislature necessary in case of private corporations.
400.503 Preference to public corporations.

APPLICATIONS FOR GRANTS

400.600 Address.
400.601 Number of copies.
400.602 Form and content.
Sec.
400.603 Exhibits.
400.604 Additional information.
400.605 Public notice of application.
400.606 Amendments.
400.607 Applications for expansion of zone and modification of zone boundaries.
400.608 Determining filing date.
400.609 Information exempt from public inspection.

GRANTS SUBJECT TO CONDITIONS

400.700 Failure to comply with conditions of grant.
400.701 Disposition of grant prohibited.
400.702 Special conditions.

OPERATION OF ZONE

400.800 Operations in zone, and forms and procedures.
400.801 Merchandise permitted in a zone.
400.802 Disposition of merchandise in a zone.
400.803 Manipulation, manufacture, and exhibition of merchandise.
400.804 Status of merchandise in a zone.
400.805 Use of zone by carriers.
400.806 Subsequent importation of zone merchandise.
400.807 Exclusion from zone of goods or process of treatment.
400.808 Retail trade within zone.
400.809 Residence within zone.
400.810 Employees and persons entering and leaving zone.
400.811 All persons entering zone bound by regulations.
400.812 Identification of employees within zone.
400.813 Hours of business and service.
400.814 Payment of customs officers and employees.
400.815 Erection of buildings within zone by persons other than grantee.

MAINTENANCE OF ZONE

400.900 Structures and facilities to be maintained in good order.
400.901 Penalty for failure to make repairs or alterations.

ADMINISTRATION OF ZONE

400.1000 Operation, maintenance and administration.
400.1001 Regulations promulgated by grantee, and posting of regulations within zone.
400.1002 Grantee's reports to Board.
400.1002a Uniform system of accounts, records, and reports.
400.1003 Zones to be operated as public utilities.
400.1004 Inspection of zones.
400.1005 Separability of regulations in event of invalidity.

Sec.
400.1006 Changes in regulations.
400.1007 Authority for publishing, posting, and filing of schedules of rates and charges.
400.1008 Adoption and issuance of schedules.
400.1009 Definitions.
400.1010 Designation of agent for issuance of schedules.
400.1011 Uniformity of schedules.
400.1012 Construction of schedules.
400.1013 Additional instructions.
400.1014 Requirements for accounts, records, and reports.

USE OF GOVERNMENT PROPERTY

400.1100 Use of Government property.

VIOLATION OF PROVISIONS OF ACT OR REGULATIONS

400.1200 Fine imposed for violation of act or regulations.
400.1201 Revocation of grant.
400.1202 Procedure for revocation.
400.1203 Appeal from revocation order.

RULES OF PROCEDURE AND PRACTICE

400.1300 Headquarters.
400.1301 Executive Secretary of the Board.
400.1302 Committee of Alternates.
400.1303 Transaction of Board business.
400.1304 Order of business.
400.1305 Authorization for hearings.
400.1306 Orders of Board.
400.1307 Applications.
400.1308 Examiners Committee.
400.1309 Hearings before Examiners Committee.
400.1310 Submission of further evidence.
400.1311 Rehearing on application.
400.1312 Action of Board on application.
400.1313 Payment for inspection.
400.1314 Construction of zone.
400.1315 Evidence.
400.1316 Object of hearing.
400.1317 Notice of hearing.
400.1318 Procedure at hearing.
400.1319 Adjournment of hearing.
400.1320 Record of proceedings.
400.1321 Additional rules of practice.

PUBLIC INFORMATION

400.1400 Policy.
400.1401 Public information activities.
400.1402 Availability of materials for inspection and copying.
400.1403 Requests for identifiable records.
400.1404 Determinations of availability of records.
400.1405 Requests for reconsideration of nonavailability.
400.1406 Security information.

AUTHORITY: Sec. 8, 48 Stat. 1000; 19 U.S.C. 81h, unless otherwise noted.

SOURCE: Regulations, June 29, 1935, unless otherwise noted.

DEFINITIONS

§ 400.100 Act.

The term "Act" means the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998 through 1003; 19 U.S.C. 81a-81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950.

[Order 29, 17 FR 5316, June 11, 1952]

§ 400.101 Zone.

The term "zone" means a "foreign-trade zone." It is an isolated, enclosed, and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unlading, handling, storing, manipulating, manufacturing, and exhibiting goods, and for reshipping them by land, water, or air. Any foreign and domestic merchandise, except such as is prohibited by law or such as the Board may order to be excluded as detrimental to the public interest, health, or safety may be brought into a zone without being subject to the customs laws of the United States governing the entry of goods or the payment of duty thereon; and such merchandise permitted in a zone may be stored, exhibited, manufactured, mixed or manipulated in any manner, except as provided in the act and other applicable laws or regulations. The merchandise may be exported, destroyed, or sent into customs territory from the zone, in the original package or otherwise. It is subject to customs duties if sent into customs territory, but not if reshipped to foreign points.

[Order 29, 17 FR 5316, June 11, 1952]

CROSS REFERENCES: For immigration regulations, see 8 CFR Chapter I. Regulations of the Customs Service, see 19 CFR Chapter I. Postal Service, see 39 CFR Chapter I. Public Health, see 42 CFR Chapter I.

§ 400.102 Secretary of Commerce.

The term "Secretary" means the Secretary of Commerce.

§ 400.103 Board.

The term "Board" means the Board created by the Act to carry out the provisions thereof. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer, the Secretary of the Treasury, and the Secretary of the Army.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.104 State.

The term "State" includes any State, the District of Columbia and Puerto Rico.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.105 Corporation.

The term "corporation" means a public or a private corporation:

(a) "Public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States.

(b) "Private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under a special act (enacted after June 18, 1934) of the State or States within which it is to operate such zone.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.106 Applicant.

The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.107 Grantee.

The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.108 District Director of Customs.

The term "District Director of Customs" means the director of customs in whose district the zone is located.

[Regulations, June 29, 1935, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.109 District Engineer.

The term "District Engineer" means the engineer of the Department of the Army in whose district the zone is located.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.110 Examiner.

The term "examiner" means an employee of the Board, an expert, officer, engineer, or any other person who is designated by the Board to conduct an investigation concerning the establishment, operation, maintenance, or administration of a zone.

JURISDICTION AND AUTHORITY OF BOARD

§ 400.200 Duties of the Board.

The Board is authorized, subject to the provisions of the act, the laws governing the navigable waters of the United States, the laws governing foreign and interstate commerce, those controlling the revenue, the Shipping Act of 1916, as amended (46 U.S.C. 801 et seq.), the Interstate Commerce Act (49 U.S.C. 1 et seq.), and other laws of the United States applicable to zones:

(a) To grant to corporations, subject to the conditions and restrictions of the act and of the rules and regulations made thereunder, the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States, if it finds that the proposed plans and location are suitable for the accomplishment of the purpose of the foreign-trade zone under the act, and that the facilities and appurtenances which it is proposed to provide are sufficient.

(b) To prescribe such rules and regulations as may be necessary to establish and conduct such zones.

(c) To approve rates and charges for all services or privileges within the zone, and to assure uniform treatment under like conditions to users of the zone or to merchandise within the zone subject to such treaties or commercial conventions in force at the time.

(d) To require compliance with lawful regulations of the Board and of other Government departments, State or municipal agencies, which may be applicable to the zone.

(e) To prescribe the form and manner of keeping the accounts of the zone.

(f) To require the submission annually, and at such other times as the Board may prescribe, of reports containing full statements of the operations, receipts, and expenditures, and such other information as the Board may require.

(g) To inspect and examine at such times as the Board may deem advisable the premises, operations, or accounts of the grantee.

(h) To impose fines of not to exceed $1,000 per day for violations of the act or of the regulations in this part.

(i) To revoke the grant of any corporation after due notice and public hearing for repeated and willful violations of the act.

(j) To prescribe reasonable and uniform regulations for like conditions and circumstances for the erection of buildings within the zone by other than the grantee.

(k) To make a report to the Congress on the first day of each regular session, containing a summary of the operation and fiscal condition of each zone, and to transmit therewith copies of the annual report of each grantee.

(l) To perform such other duties as may be necessary to administer the provisions of the act.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.201 Cooperation with other agencies.

The Board is authorized to cooperate:

(a) With other Government departments or other Federal agencies having jurisdiction in or adjacent to ports of entry.

(b) With State and local authorities in the exercise of their police, sanitary, and other powers in connection with the zone.

(Sec. 9, 48 Stat. 1000; 19 U.S.C. 81i)

§ 400.202 Cooperation with Board of other agencies of the Government.

By authority of the act and Executive Order 7104, the executive departments and other establishments of the Government will furnish to the Board such records, papers, and information in their possession as may be required by the Board, and temporarily detail to the service of the Board such officers, experts, or engineers as may be necessary to enable the Board to carry out its duties under the act.

(Sec. 10, 48 Stat. 1001; 19 U.S.C. 81j)

§ 400.203 Executive Order No. 7104.

Executive departments and other establishments of the Government are hereby ordered and directed to cooperate with the Board established by the act of June 18, 1934 (48 Stat. 998 through 1003; 19 U.S.C. 81a through 81u), for carrying out the purposes thereof, and at the request of the said Board to furnish it such records, papers, and information in their possession, as it may require, and to temporarily detail to its service such officers, experts, or engineers as may be necessary for the purpose of facilitating the investigation of the Board and its work in connection with the establishment, operation, and maintenance of foreign-trade zones.

[E.O. 7104, July 18, 1935]

NUMBER AND LOCATION OF ZONES

§ 400.300 Each port of entry entitled to at least one zone.

Subject to the provisions of the act and of the regulations in this part, each port of entry shall be entitled to at least one zone.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.301 Port of entry located in more than one State entitled to a zone in each such State.

When a port of entry is located within the confines of more than one State, such port of entry shall be entitled to a zone in each of such States.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.302 Zone may be authorized in each of two cities separated by water in one port of entry.

When two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.303 Additional zones in port of entry may be authorized by Board.

Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not serve adequately the convenience of commerce.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.304 Zones for specialized purposes.

The establishment of a zone, or a sub-zone in an area separate from an existing zone, for one or more of the specialized purposes of storing, manipulating, manufacturing, or exhibiting goods, may be authorized if the Board finds that existing or authorized zones will not serve adequately the convenience of commerce with respect to the proposed purposes.

[Order 29, 17 FR 5316, June 11, 1952]

ECONOMIC, FINANCIAL, AND PHYSICAL REQUIREMENTS FOR ESTABLISHMENT OF ZONE

§ 400.400 Economic survey of proposed zone.

Before a grant is made, an economic survey must demonstrate to the satisfaction of the Board that the anticipated commerce, benefits, and returns, both direct and indirect, will justify its construction to expedite and encourage foreign commerce. In considering the economic impact of the proposal, the Board will take into account its impact on the U.S. balance of payments, as well as its environmental impact in the light of national policy.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.401 Proof of ability of applicant adequately to finance zone.

The ability of the applicant adequately to finance and conduct the undertaking must be demonstrated to the complete satisfaction of the Board.

§ 400.402 Physical facilities required in the operation of a zone.

(a) *Where zone will be adjacent to water.* (1) Adequate slips to accommodate vessels engaged in foreign trade.

(2) Wharves and docks suitably constructed for the needs of the specific commodities to be handled over them.

(3) Mooring facilities for the protection of vessels while loading, unloading, or awaiting berth.

(4) Transit sheds on the wharves for the protection of goods accumulated for shipment or unloaded and awaiting disposition.

(5) Warehouses so constructed and located as to meet the requirements of goods to be stored and the special regulations of the Treasury Department to safeguard the revenue.

(6) Transportation connections with systems serving surrounding territory and other parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue.

(7) Fuel facilities for servicing vessels with coal or other fuel, with adequate reserve storage spaces.

(8) Light and power facilities throughout the zone, on the wharves and docks, and to meet any special requirements of the Treasury Department in safeguarding revenue.

(9) Water and sewer mains constructed to meet approved plans for service and health protection.

(10) Fire protection suitable for proper protection of zone and goods in storage.

(11) Administrative and living quarters and facilities for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone.

(12) Adequate enclosures to segregate the zone from customs territory for the protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise.

(13) Sanitary facilities and appliances to conform to Federal and local requirements.

(14) Adequate facilities for the disinfection and fumigation of merchandise as required.

(15) Such other facilities as may be required by the Board.

(b) *Where zone will not be adjacent to water.* (1) Warehouses so constructed and located as to meet the requirements of goods to be stored and the special regulations of the Treasury Department to safeguard the revenue.

(2) Transportation connections with systems serving surrounding territory and other parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue.

(3) Light and power facilities throughout the zone, and to meet any special requirements of the Treasury Department in safeguarding the revenue.

(4) Water and sewer mains constructed to meet approved plans for service and health protection.

(5) Fire protection suitable for proper protection of zone and goods in storage.

(6) Administrative and living quarters and facilities for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone.

(7) Adequate enclosures to segregate the zone from customs territory for the protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, and merchandise.

(8) Sanitary facilities and appliances to conform to Federal and local requirements.

(9) Adequate facilities for the disinfection and fumigation of merchandise as required.

(10) Such other facilities as may be required by the Board.

(c) *Ratproofing and sanitation.* All buildings and other structures within the zone, whether it is adjacent to water or not, shall be so constructed or altered, and maintained, as may be required by the Surgeon General, United States Public Health Service, to prevent the harborage of rodents. Water supply, sewage disposal, and provision for general sanitation (including adequate facilities for disinfection and fumigation) shall be as required by the Surgeon General, United States Public Health Service.

(Sec. 12, 48 Stat. 1001; 19 U.S.C. 81*l*)

§ 400.403 Construction and operation of equipment for segregation from customs territory and quarters for personnel.

(a) All zones shall be segregated from the land area of adjacent customs territory by a fence of woven galvanized-wire netting, of not less than No. 6 gage wire, with a mesh not exceeding 2 inches, and an over-all height of at least 10 feet above the concrete base in which the posts are set. The netting shall be securely attached to the insides of the posts and shall be set sufficiently low so as to be flush with the ground at all times. The fence shall be topped by at least three strands of galvanized barbed wire, four-point type, each strand consisting of two strands of No. 12½ gage wire. The three strands shall be secured to metal brackets affixed to the top of each post, the brackets inclining at approximately 45° inward and upward. The strands shall be parallel and from 3 to 4 inches apart. Suitable concrete or metal posts shall be set in concrete footings, not less than 3 feet deep by 10 inches square, and with centers not more than 10 feet apart. Proper anchors and braces shall be installed at corners and gates. The gates shall be of the same material and height as the fence and shall be topped by three strands of the barbed wire above described, such strands to be affixed to metal brackets perpendicular with the gate. Suitable attachments shall be secured to the gates for the purpose of affixing locks. Alternate proposals for barriers of equal efficiency may be approved by the Board.

(b) If, according to the terrain or other factors adjacent to the fence surrounding the enclosure, or for other reasons, the height of the fence as provided for herein is not sufficient for proper protection to the revenue, the height shall be suitably increased at the direction of the Board or the District Director of Customs.

(c) If sides of buildings situated within a zone from a part of the zone enclosure in lieu of the fence prescribed above, all openings in such sides of the buildings shall be securely closed by heavy metal netting, grills, or other effective barriers.

(d) Fences and other exterior lines of the zone shall be equipped with electric lights and shall be illuminated to the satisfaction of the collector during such times as he may deem necessary.

(e) Such additional protection against the unauthorized transit of persons, goods, or conveyances to or from a zone shall be provided as may be deemed necessary by the District Director of Customs.

(f) Adequate living quarters, administrative and other facilities for officers and employees of the United States, State, and municipality whose duties may require their presence within the zone, shall be provided by the grantee. The requirements and extent of these facilities will be fixed by the Board.

(g) Each grantee shall provide and maintain such other facilities as may be required from time to time by the Board.

(Sec. 12, 48 Stat. 1001; 19 U.S.C. 81*l*)

[Regulations, June 29, 1935, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

ELIGIBLE APPLICANTS

§ 400.500 Grants made to corporations.

Grants may be made to public or private corporations.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.501 Requirements for grant where harbor facilities owned and controlled by State and by municipality.

Where harbor facilities of any port of entry in the State are owned and controlled by the State, and where harbor facilities of any other port of entry in the State are owned and controlled by a municipality, grants to public corporations will not be approved by the Board unless such applications have been authorized by an act of the State legislature (enacted after June 18, 1934).

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.502 Act of State legislature necessary in case of private corporations.

Grants to private corporations will not be approved by the Board unless such corporations have been authorized by an act of the State legislature (enacted after June 18, 1934).

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.503 Preference to public corporations.

In granting applications preference will be given by the Board to public corporations.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

APPLICATIONS FOR GRANTS

§ 400.600 Address.

Applications for grants should be filed with, and all official communications in connection therewith addressed to the Secretary of Commerce, Chairman and Executive Officer of the Foreign-Trade Zones Board, Washington, DC 20230.

[Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.601 Number of copies.

Every application, and attachment, shall be submitted with 12 true copies in addition to the original, unless the Executive Secretary determines that fewer copies are needed.

[Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.602 Form and content.

Every application shall be in letter form on letter-size paper and shall contain the date, official designation of the applicant, and shall show whether the application is for the establishment or expansion of the zone, be signed by an authorized officer of the corporation, and bear the corporate seal.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.603 Exhibits.

Every application shall be accompanied by the following exhibits:

(a) *Exhibit No. 1.* Descriptions of (1) the location and qualifications of the area in which it is proposed to establish the zone, showing by metes and bounds, unless these are shown in full on the maps accompanying the application, the land and water area, or land or water area, or land area alone if the application is for the establishment of a zone in or adjacent to an interior port of entry; (2) the means of segregation from customs territory, as required by §§ 400.402, 400.403; (3) the fitness of the area for a zone; and (4) the possibilities of expansion of the zone area.

(b) *Exhibit No. 2.* A statement as to whether the port is within the confines of more than one State, and whether the zone will be in or adjacent to a port of entry.

(c) *Exhibit No. 3.* A statement giving full details as to the applicant's plans for acquiring title to, or the right to occupy and use, lands other than those owned by the applicant or by the United States, which are essential for carrying out the project or projects covered by the application. If the applicant, at the time of filing the application, has, by easement, lease, franchise, or otherwise, acquired the right to occupy and use lands owned by others, the statement must show, with respect to each separate right of occupancy and use:

(1) From whom acquired; (2) the date acquired; (3) nature and extent of the right acquired; (4) whether perpetual or of limited term; and (5) if of limited term, when such term expires.

(d) *Exhibit No. 4.* A statement showing in detail the method proposed to finance the undertaking, accompanied by proof of the ability of the applicant to finance the construction and operation of the zone.

(e) *Exhibit No. 5.* An economic survey showing in detail the potential commerce and revenue of the proposed zone and other direct and indirect benefits accruing therefrom; present foreign trade of the port area, including transshipment, reexport, and reconsignment trade; present transportation services, and possible increases in such services where necessary; comparative study of export rates on domestic commodities for mixing with foreign goods; analysis of transportation rates where applicable to zone activity; potential new markets for zone business; activities best suited to the particular zone; the impact that the operation of the zone is expected to have on the U.S. balance of payments and balance of trade; the expected environmental impact of the zone with details as to control measures not otherwise described in the next exhibit; and such other data as may be necessary to a determination of whether the establishment of the zone is justified to expedite and encourage foreign commerce in a manner compatible with domestic and foreign economic policy.

(f) *Exhibit No. 6.* (1) A description of the proposed project, where zone will be adjacent to water, to include:

(i) Slips and docks, giving number and for each the dimensions and depth of water below a stated datum;

(ii) Wharves, giving number and for each the type of construction, width, area, sheds, loading and unloading facilities, trackage, fire protection, motoring facilities, and an estimate of the number of ocean-going ships which could be accommodated;

(iii) Warehouses, giving type of construction, floor area, and fire protection;

(iv) Transportation connections by rail and highway, giving the number of tracks and routes by which they would be connected with existing rail and highway systems;

(v) Facilities for coal and other fuel, and for light and power;

(vi) Water and sewer mains;

(vii) Administrative and living quarters and facilities to be provided for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone (as required by §§ 400.800 through 400.812);

(viii) Enclosure to segregate the zone from customs territory, together with the provisions for ingress and egress of persons, conveyances, vessels, and merchandise, showing in detail compliance with §§ 400.800 through 400.812, and including a description of openings and, if buildings form part of the enclosure line, a full description of the construction of the buildings and any openings therein on the line side.

(2) A description of the proposed project, where zone will not be adjacent to water, to include:

(i) Loading and unloading facilities;

(ii) Warehouses, giving type of construction, floor area, and fire protection;

(iii) Transportation connections by rail and highway, giving the number of tracks and routes by which they would be connected with existing rail and highway systems;

(iv) Facilities for coal and other fuel, and for light and power;

(v) Water and sewer mains;

(vi) Administrative and living quarters and facilities to be provided for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone (as required by §§ 400.800 through 400.812);

(vii) Enclosure to segregate the zone from customs territory, together with the provisions for ingress and egress of persons, conveyances, and merchandise, showing in detail compliance with §§ 400.800 through 400.812, and including a description of openings and, if buildings form part of the enclosure line, a full description of the construction of the buildings and any openings therein on the line side.

(g) *Exhibit No. 7.* A preliminary estimate of the cost of the proposed project, sufficiently detailed to be subject to verification.

(h) *Exhibit No. 8.* A statement of the time after the date of the approval of the application within which the applicant proposes to commence and complete the construction of the zone and the facilities and appurtenances, and to set up and commence operation of the zone.

(i) *Exhibit No. 9.* The largest scale charts of the United States Coast and Geodetic Survey of the locality, showing in red the boundaries of the proposed zone (four copies); or if an interior zone, four copies of a map on an appropriate scale, showing in red the boundaries of the proposed zone.

(j) *Exhibit No. 10.* A detailed map, on tracing linen and three blue line prints, showing the proposed lay-out of the zone.

(1) The map shall be not smaller than 24 inches by 36 inches and not larger than 28 inches by 40 inches; shall have a clear border of one-half inch on three sides and 2½ inches on the left-hand shorter side; shall have a numerical scale and a graphical scale, the latter not less than 6 inches in length; shall have the true meridian indicated thereon; and shall have a space 4 inches by 7 inches in the lower right-hand corner, the upper half of which shall bear the title, scale, etc., and the lower half shall be left clear.

(2) The map shall show, in land areas, all existing structures and improvements, and, on water areas, by soundings, the present depths below a plane of reference stated on the map. The outline of the proposed slips, docks, wharves, warehouses, streets and highways, railroads, facilities for fuel, light, power, water and sewer mains; quarters and enclosures shall be shown by suitable heavy lines and these features designated clearly by lettering. The depths to be provided in water areas below the noted datum plane shall be shown by figures.

(3) The scale of the map shall be such as to show the complete zone on one sheet of the size prescribed.

(4) If rail connections to existing railroad systems cannot be shown on the map of the zone, an additional map or maps on tracing linen and three blue line prints, showing the proposed rights-of-way therefor and all structures, streets, and other improvements affected thereby shall be furnished. These maps shall be subject to the same requirements as to size, border, scale, meridian, and title as the map of the zone.

(k) *Exhibit No. 11.* (1) If the applicant is a State, the application for a grant shall be accompanied, as evidence of the applicant's qualifications to make application, by a copy of the law or laws under authority of which the application is made, duly certified by the Governor or secretary of state of the State under seal, and three uncertified copies of such law or laws (enacted after June 18, 1934).

(2) If the applicant is a public corporation, other than a State, as defined in section 1(e) of the act, the application for a grant shall be accompanied by evidence of the applicant's qualifications to make the application, as follows:

(i) A copy of its charter or other organization papers duly certified by the secretary of state of the State in which it is located, or by the officer having legal custody of the record of municipal and other public corporations (one copy only);

(ii) A statement under seal of the secretary of state of the State or other officer charged by State laws with supervision of harbor facilities, setting forth whether the State owns and controls harbor facilities of any port of entry and whether harbor facilities of any other port of entry in the State are owned and controlled by a municipality, with three uncertified copies of such statement.

(3) If the applicant is a private corporation, the application for a grant shall be accompanied by evidence of the applicant's qualifications to make the application, as follows:

(i) A copy of its charter or articles of incorporation duly certified by the secretary of state of the State where organized or other officer having legal custody of a record of incorporation (one certified and three uncertified copies);

(ii) A statement, under corporate seal, setting forth that the organization of the corporation is completed, showing that the corporation is authorized to proceed with the establishment of a foreign-trade zone under the laws of the State, and giving a true list of the principal officers of the corporation, with the full names and official designation of each, with three copies of such statement;

(iii) A certified copy of the special act or acts of the State or States in which the zone is located (enacted after June 18, 1934) and providing for the chartering of the corporation for the specific purpose of establishing a zone, with three uncertified copies of such act or acts.

(l) *Exhibit No. 12.* Evidence satisfactory to the Board that permits for construction have been obtained from Federal, State, or municipal authorities.

(m) *Exhibit No. 13.* Duly authenticated copies of the proceedings of the governing body of the corporation authorizing the official signing the application to make such application.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

[Regulations, June 29, 1935, as amended by Order 17, 14 FR 3671, July 2, 1949; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.604 Additional information.

An applicant may be required by the Board to furnish maps, plans, or other data in addition to the requirements specifically set forth in the regulations in this part, if, in the judgment of the Board, such additional data are desirable for a full understanding of the projects, or for the purpose of enabling the Board to review the design thereof, either in whole or in part.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.605 Public notice of application.

Subsequent to determining the filing date of an application to establish a zone, as prescribed by § 400.608, public notice will be given in the FEDERAL REGISTER and in news releases. Notices will contain the names and addresses of applicants, general description of the project, arrangements for public hearings scheduled, and provisions for interested parties to communicate their views to the Board, in person or in writing. At public hearings upon any application, officials of the Board may require the presentation of such information respecting the application as in their judgment the proper conduct of the hearings or the public interest requires.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.606 Amendments.

The Board may upon its own initiative or upon request permit the amendment of an application.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.607 Applications for expansion of zone and modification of zone boundaries.

Applications for expansion of an established zone shall be made and approved in the same manner as an original application. In cases of requests for minor modifications in zone boundaries which are not designed to expand zone operations and will not result in such an expansion, the Executive Secretary is authorized to determine the requirements for the exhibits to such applications. Among the exhibits there shall be a report from the District Director of Customs and of the District Engineer. If the latter two officials recommend that the requested modification be approved, the Executive Secretary shall have the authority to approve the application.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.608 Determining filing date.

Applications will be considered to have been filed as of the date of receipt by the Board of the information called for in §§ 400.600 through 400.604. The applicant will be advised of the filing date of his application.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.609 Information exempt from public inspection.

An application should not contain confidential information, and any part of the application marked clearly as requiring restricted handling will not be accepted. Data which in the opinion of the applicant should be treated as confidential may be so marked and submitted to the Board as a separate supplement. However, the Board reserves the right not to accept for inclusion in the record any papers containing data for which confidential treatment is sought.

[Order 74, 32 FR 13714, Sept. 30, 1967]

GRANTS SUBJECT TO CONDITIONS

§ 400.700 Failure to comply with conditions of grant.

Should the grantee fail to comply with any of the conditions of a zone or subzone grant issued by the Board, including the provisions concerning construction and commencement of operations, the Board may revoke the grant or declare it null and void. In such cases the Board may issue an order to show cause why the action it contemplates should not be taken, and the grantee shall have 30 days in which to answer.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.701 Disposition of grant prohibited.

The grant shall not be sold, conveyed, transferred, set over, or assigned.

(Sec. 17, 48 Stat. 1002; 19 U.S.C. 81q)

§ 400.702 Special conditions.

Special conditions applicable to a particular zone may be required by the Board and inserted in the grant for that zone.

OPERATION OF ZONE

§ 400.800 Operations in zone, and forms and procedures.

The merchandise and operations permitted in a zone, the disposition of merchandise in a zone, the zone status of the merchandise and special provisions applicable to each status, the subsequent importation of merchandise exported from a zone, and other operations in a zone authorized by the act, are hereinafter in this part generally described. The zone forms[1] required are appended to these regulations and made a part thereof, and the procedures required are set forth in Customs regulations relating to foreign-trade zones (19 CFR Part 146), and the regulations and schedules of rates and charges made and fixed by the zone grantee and approved by the Board.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.801 Merchandise permitted in a zone.

Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in the act and the regulations made thereunder, be brought into a zone.

(a) Merchandise which is specifically and absolutely prohibited by law shall not be admitted into a zone. Any merchandise so prohibited by law which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise. A distinction is made between (1) merchandise which is specifically and absolutely prohibited by law on the grounds of policy or morals, such as immoral or subversive literature, obscene articles, or lottery matter, and (2) conditionally admissible merchandise which may be imported under certain conditions, for example, articles which are subject to permits or licenses for the protection of economic or national security or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. District Directors of Customs are required to exclude the first class of articles and may not permit them to be transferred to a zone if they are aware of their prohibited status, except that the collector may permit the temporary deposit of any such merchandise in the zone pending final determination of its status. The transfer of articles of the second class to a zone is subject to any requirements of the Federal agency concerned. Unless otherwise prohibited, over-quota merchandise may be placed in a zone pending its right to transfer to customs territory pursuant to the applicable quota provisions.

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[1] Zone Forms B, C, D, E, F filed, as part of original document.

(b) The application for the admission of merchandise into a zone shall be approved or disapproved by the District Director of Customs, as the representative of the Board, where the merchandise is not excluded by any other Federal agency having jurisdiction over the merchandise.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.802 Disposition of merchandise in a zone.

In general, merchandise lawfully brought into a zone may, in accordance with these and other regulations made under the provisions of the act be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise, and domestic merchandise whose identity has been lost, is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise.

[Order 29, 17 FR 5316, June 11, 1952]

§ 400.803 Manipulation, manufacture, and exhibition of merchandise.

In general, merchandise, lawfully brought into a zone may, in accordance with these and other regulations made under the provisions of the act, be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign and domestic merchandise, or otherwise manipulated, or be manufactured, except as otherwise provided by the act.

(a) Permission for any manipulation, manufacture, or exhibition in a zone shall be obtained from the District Director of Customs, as the representative of the Board, subject to such application and procedure prescribed by the Secretary of the Treasury for the protection of the revenue.

(b) In the event of the denial of any application by the District Director of Customs for any reason, the applicant, the grantee, or the operator of the zone may appeal the adverse ruling to the Board. If any revenue-protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.804 Status of merchandise in a zone.

(a) For the purposes of the act and the regulations of this part, all merchandise within a zone, except merchandise in transit through a zone as provided in § 146.14 of customs regulation,[2] and except merchandise temporarily transferred to a zone for manipulation as provided in paragraph (b) of this section, shall be given a zone status as:

(1) Privileged foreign merchandise,

(2) Privileged domestic merchandise,

(3) Non-privileged foreign merchandise,

(4) Non-privileged domestic merchandise, or

(5) Zone-restricted merchandise, in accordance with §§ 146.21, 146.22,

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[2] 19 CFR Part 146.

146.23, 146.24, and 146.25 of Customs regulations.

(b) Imported merchandise which has been entered and which has remained in continuous customs custody may be temporarily transferred to a zone for manipulation under customs supervision pursuant to section 562, Tariff Act of 1930, as amended, and for return to customs territory. Any such merchandise shall not be considered within the purview of the Foreign-Trade Zones Act, but shall be treated in all respects as though remaining in customs territory. Therefore no zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent customs laws.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.805 Use of zone by carriers.

The water area, docking facilities, and loading or unloading stations of a zone are intended primarily for the use of vessels, vehicles, or aircraft unlading merchandise into the zone or lading merchandise from the zone, and their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue, or by the Board if found to interfere with the primary uses of the zone.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.806 Subsequent importation of zone merchandise.

Articles produced or manufactured in a zone and exported therefrom shall, on subsequent importation into the customs territory of the United States, be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of section 3 of the act, as amended, may, on such importation, be entered as American goods returned.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.807 Exclusion from zone of goods or process of treatment.

When it shall be reported to the Board that any goods or process of treatment is detrimental to the public interest, health, or safety, the Board shall cause such investigation to be made as it may deem necessary. The Board may order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5316, June 11, 1952]

§ 400.808 Retail trade within zone.

No retail trade shall be conducted within a zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory. Permits which are sent to the Board for approval shall be accompanied by a sworn statement, subscribed to by the applicant before a duly authorized officer to administer oaths, setting forth in detail the nature of the retail trade to be conducted, and containing an agreement that such applicant will sell no goods, except of the kinds specifically authorized by the act, which are brought into the zone from customs territory. No goods shall be offered for sale or sold in a zone which are not of the same kind and quality permitted to be offered for sale or sold in the political jurisdiction in which the zone is located. If the permittee violates any provision of the regulations in this part, his permit shall be revoked by the grantee, who shall immediately report such action to the Board.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5316, June 11, 1952]

§ 400.809 Residence within zone.

No person shall be allowed to reside within a zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary by the Board.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.810 Employees and persons entering and leaving zone.

Employees and other persons entering or leaving a zone shall pass through the designated entrances and exits in the enclosure surrounding the zone, except that ships' crews and passengers, duly authorized pilots and helmsmen, and employees of the Federal Government may enter or leave aboard vessels arriving at or departing from the zone; and except that crews of service vessels, such as ship chandlers' boats, tug boats, water boats, fuel barges, cargo lighters, and barges, and crews of floating equipment for use in connection with vessel repairs or maintenance, or for maintenance of structures of the zone or its channels or slips, may enter or leave a zone by way of prescribed water routes or courses. Employees and other persons shall be subject to such examination upon entering and leaving a zone as the collector may deem necessary for the protection of the revenue.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.811 All persons entering zone bound by regulations.

All persons entering a zone for any reason whatsoever shall be bound by the regulations promulgated by the Board and by the operator of the zone.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.812 Identification of employees within zone.

All persons on duty within, and in connection with the operation of, a zone, with the exception of Federal employees and uniformed employees of the zone shall be required while within the zone to carry identification cards or wear appropriate identification badges to be provided by the operator of the zone.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.813 Hours of business and service.

Hours of business and service, for customs purposes, shall be the same as those prescribed in Customs regulations. (19 CFR Chapter 1)

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.814 Payment of customs officers and employees.

(a) The cost of maintaining the customs service in a zone shall be paid monthly by the grantee of such zone to the District Director of Customs.

(b) Customs officers and employees performing services in a zone at night, or on Sundays and holidays, shall receive extra compensation, to be computed as and under the conditions prescribed by customs regulations.

(c) For the purpose of computing extra compensation the word "night" shall be construed to mean the time from 5:00 p.m. to 8:00 a.m. and the word "holiday" shall include only national holidays, viz., January 1, February 22, May 30, July 4, the first Monday in September, November 11, the fourth Thursday in November, and December 25, and such other days as may be made national holidays.

(d) In a zone at a port where customary working hours are other than those herein mentioned, the District Director of Customs is authorized to regulate the hours of customs officers and employees assigned to the zone so as to agree with prevailing working hours in said port, but nothing herein shall be construed in any manner to affect or alter the length of a working day for customs officers or employees, or the overtime pay.

[Order 29, 17 FR 5317, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.815 Erection of buildings within zone by persons other than grantee.

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirement: *Provid-*

ed, (a) That such permission shall not constitute a vested right as against the United States, nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States; (b) that in the event of the United States or the grantee desiring to acquire the property of the permittee, no good will shall be considered as accruing from the privilege granted to the zone; and (c) that such permits shall not be granted on terms that conflict with the public use of the zone as set forth in the act: *And provided further,* That accepted sanitary practices be followed in the construction, equipment, and operation of such buildings and other structures.

(Sec. 13, 48 Stat. 1001; 19 U.S.C. 81m)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

MAINTENANCE OF ZONE

§ 400.900 Structures and facilities to be maintained in good order.

The grantee shall at all times maintain the structures and other facilities within the zone in good condition and so as not to endanger the life and health of employees of the United States and others who may be required to enter the zone.

§ 400.901 Penalty for failure to make repairs or alterations.

Should the grantee fail to make such repairs or alterations as may be ordered by the Board, action will be taken as provided in §§ 400.1200 through 400.1203.

ADMINISTRATION OF ZONE

§ 400.1000 Operation, maintenance and administration.

The zone shall be operated, maintained, and administered by the grantee under (a) the supervision, direction, and control of the Board in accordance with the provisions of the act and the regulations of the Board in this part, (b) the regulations relating to foreign-trade zones of the Bureau of Customs for the protection of the revenue (19 CFR Part 146) and any other law, regulation, or instruction the Customs Service is required or authorized to enforce, (c) such other applicable laws and regulations thereunder of other Federal agencies, and (d) the regulations and schedules of rates and charges made and fixed by the grantee and approved by the Board. The District Director of Customs in whose district the zone is located shall, in addition to his duties as District Director of Customs, be in local charge of the zone as the resident representative of the Board. He may call upon the district engineer and local representatives of other governmental departments and agencies for advice in matters of operation, maintenance, and administration.

[Order 29, 17 FR 5317, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1001 Regulations promulgated by grantee, and posting of regulations within zone.

The grantee shall, before beginning operation of a zone submit to the Board its own rules, regulations, and practices for the operation of the zone, subject to disapproval of the Board. There shall be posted in a conspicuous place within the zone copies of the regulations issued by the Board and the approved regulations of the grantee, or of such extracts from either or both of such regulations as the Board may designate.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.1002 Grantee's reports to Board.

Each grantee shall make to the Board annually, and at such other times as the Board may prescribe, reports containing a full statement of the operations, receipts, expenditures, and such other information as the Board may require. After the establishment of a zone, the Board will prescribe the form and manner of keeping the accounts.

(Sec. 16, 48 Stat. 1002; 19 U.S.C. 81p)

§ 400.1002a Uniform system of accounts, records, and reports.

Every grantee of a zone shall keep its books, records, and accounts in the form and manner prescribed in "Uniform System of Accounts, Records, and Reports", approved February 6, 1939.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.1003 Zones to be operated as public utilities.

(a) All rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments.

(b) Schedules containing all the rates and charges shall be published, posted, and filed with, and subject to the approval of the Board. Full instructions concerning the publication, posting, and filing of such schedules will be issued by the Board.[3] One copy of each tariff required to be filed with any State regulatory body shall also be filed with the Board.

(c) Where applicable, the operator of the zone will remain subject to the requirements of the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.) and to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.).

(Sec. 14, 48 Stat. 1001; 19 U.S.C. 81n)

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1004 Inspection of zones.

Representatives of the Board will inspect, from time to time, the operations of the zones for the purpose of informing the Board whether the provisions of the act and the regulations in this part are being met. The operators of the zones shall comply fully with the requirements of such representatives, and make available to them such records and reports as the representatives may find necessary for a proper and thorough inspection of zone activities.

§ 400.1005 Separability of regulations in event of invalidity.

If any provision of the regulations in this part, or the application thereof to any person or circumstances, be held invalid, the remainder of the regulations in this part and their application to other persons or circumstances shall not be affected thereby.

§ 400.1006 Changes in regulations.

Regulations issued pursuant to the provisions of the act may be amended, supplemented, suspended or revoked, from time to time, as may be deemed necessary. Regulations shall not be construed as conferring privileges or interests which may not be adversely affected by subsequent regulations or by any changes whatsoever in existing regulations.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.1007 Authority for publishing, posting, and filing of schedules of rates and charges.

Section 14 of the Act of June 18, 1934 (48 Stat. 998; 19 U.S.C. 81n), provides that "* * * all rates and charges for all services or privileges within the zone shall be fair and reasonable * * *", and § 400.1003(b) provides that "* * * full instructions concerning the publication, posting, and filing of such schedules will be issued by the Board * * *".

[Par. 1, Instr., Feb. 7, 1938]

§ 400.1008 Adoption and issuance of schedules.

In accordance with the authority contained in § 400.1007, the Foreign-Trade Zones Board on February 7, 1938, adopted and issued the following instructions concerning the publication, posting, and filing of schedules containing all the rules, regulations, rates and charges for all services and privileges within foreign-trade zones. Additional instructions, and an elaboration or extension of those set forth herein, may be issued from time to time.

[Par. 2, Instr., Feb. 7, 1938]

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[3] See §§ 400.1007 through 400.1013.

§ 400.1009 Definitions.

That there may be no misunderstanding the following definitions are to be followed in the preparation of the schedules:

(a) *Grantee.* The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted, in accordance with the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998 through 1003; 19 U.S.C. 81n).

(b) *Schedule.* The term "schedule" means a publication stating rates and charges of a foreign-trade zone, and all rules and regulations applying in connection therewith and to general operating procedure.

(c) *Publication.* Should be construed as the act of constructing, or compiling and publishing a schedule which will include all pertinent information in connection with the rates, charges, rules, and regulations applicable thereto within a foreign-trade zone, and also such other schedules as may be inaugurated from time to time.

(d) *Posting.* Should be construed as the act of posting all effective schedules within a foreign-trade zone, and the general offices of the grantee, in such a manner that they will be accessible to the public, and can be conveniently inspected. Requests may originate from the public for copies of effective schedules, and this also comes under the general heading of "posting" as such requests should be complied with to every reasonable degree.

(e) *Filing.* All schedules must be filed with the Foreign-Trade Zones Board and such other States or Federal regulating bodies as may subsequently exercise any jurisdiction in connection with the operation of foreign-trade zones. All original schedules so filed are, of course, considered as the effective schedules, unless otherwise cancelled or revised.

[Par. 3, Instr., Feb. 7, 1938]

§ 400.1010 Designation of agent for issuance of schedules.

(a) The obligation to compile and publish, post and file schedules naming rates, charges, rules and regulations, applying at foreign-trade zones is a direct responsibility of the grantee. The grantee should place such obligation and authority, through a power of attorney, with a member of its organization specifically designated to perform such work, thereby definitely fixing the responsibility for publishing, posting, and filing schedules on behalf of the grantee. The granting of such authority to a specifically designated person would ratify and confirm the lawful action of such an agent of the grantee with respect to the responsibility imposed by law in connection with publishing, filing, and posting of schedules. In other words, the granting of such a power of attorney to a designated person would serve the following purposes insofar as the grantee is concerned:

(1) Would give the person so designated the authority to publish, post and file schedules, and all revisions thereto on behalf of the grantee.

(2) Avoid duplication of this responsibility and possible conflict with respect to the material contained in schedules, by placing with one person the authority to carry out the provisions of the act with relation to publishing, posting and filing schedules.

(3) Would also place the responsibility for the unification and dissemination of information contained within schedules to the interested public, and the many other incidental details with regard to this important subject, upon the person granted the power of attorney.

(b) The granting of such authority to a specifically designated person could be limited in the following respects:

(1) By defining the period of time such power of attorney is to run.

(2) By stating the exact nature of responsibility for which the power of attorney is issued, for instance "to publish, post, and file schedules, and all incidental duties in relation thereto."

(c) From the above it will be seen that one of the main objectives to be accomplished thereby would be to limit the responsibility on behalf of the grantee to one person, a specifically designated authority, to handle all matters in relation to the publication, posting, and filing of schedules.

Future developments of foreign-trade zones will undoubtedly reveal the numbers and kinds of schedules and revisions necessary to the conduct of such organizations.

[Par. 4, Instr., Feb. 7, 1938]

§ 400.1011 Uniformity of schedules.

In order that all original schedules and revisions embracing matters pertaining to foreign-trade zones, such as rates, charges, rules and regulations, and any additional schedules and revisions that may be subsequently issued, will be constructed as uniformly as possible, the following is prescribed:

(a) All schedules shall be compiled and published in loose-leaf form, both the original schedule and subsequent revised pages conforming to a size of approximately 8 inches wide by 11 inches long.

(b) Schedules and revised pages shall be plainly printed, mimeographed or reproduced by other similar durable process on paper of good quality.

(c) The loose-leaf pages of the schedule shall be printed upon one side only, and each page consecutively numbered, beginning with "original page No. 1." etc.

(d) A margin of not less than one (1) inch shall surround the schedule page, especially at the binding edge.

(e) No alteration in writing or erasure shall be made in any part of the schedule.

(f) A hard cardboard front and back cover shall be used in binding schedules, and allowance made for conveniently fastening and unfastening the schedule to permit insertion of revised pages from time to time.

(g) The front cover and back cover of schedules may be in any color which may be determined upon, but the pages within the schedule shall be white, at least commencing with original page number one up to and including the last page, and all revisions thereof.

[Par. 5, Instr., Feb. 7, 1938]

§ 400.1012 Construction of schedules.

All schedules should be constructed as simply as possible, but accuracy and comprehensiveness should not be sacrificed. The Board, therefore, instructs that the following general outline of the schedule be followed as closely as possible:

(a) *Title page.* The title page shall generally bear such items as:

(1) The name of the grantee or operator.

(2) The schedule number.

(3) Descriptive statement of the contents named within schedule.

(4) Location of zone.

(5) The date the schedule is issued and effective date.

(6) The name of the person by whom the schedule is issued.

This information may be given on the cover of the schedule as well as on the page constituting original page No. 1 of the schedule.

(b) *Administrative organization page.* On this page, which will form original page No. 2, shall be listed the public officials and managing officers connected directly with the operation of the zone.

(c) *Checking sheet for schedule.* This standard method of noting corrections and additions to the schedule shall be used and followed by the grantee. The checking sheet shall carry an explanation for its use to all who are in possession of the original schedule.

(d) *Table of contents.* The table of contents shall follow the general outline as given in this section and shall include all major references by pages.

(e) *Explanation of abbreviations and symbols.* A complete list of abbreviations and symbols used in the schedule shall be explained.

(f) *Definitions.* There shall be given definitions of all terms used in this schedule relating to rules, regulations, rates and charges, also of any terms relating to the physical construction of this schedule. Where the Foreign-Trade Zones Board has supplied definitions for terms to be used herein, those definitions shall be used.

(g) *Rules and regulations.* Special care should be taken in the compilation of rules and regulations that they may be complete and self-explanatory with respect to their general application. It is suggested that rules and regulations of general application be segregated from those of specific or special application. It is also suggested that rules and regulations be grouped in their application, that is, concerning carriers, concerning cargo, concerning persons, concerning rates and charges, etc.

(h) *Prohibited merchandise.* There shall be listed all merchandise which has been excluded from the privileges of the zone for any reason.

(i) *Rates and charges.* (1) Applying to carriers: Herein shall be listed all charges applicable to carriers, their owners or agents, in the following manner: Vessels: towage, dockage, loading and discharging, running lines, fumigation, etc. Rail cars: Switching charge, demurrage, etc. Motortrucks; property privilege, loading and unloading, etc.

(2) *Applying to cargo.* All rates and charges collectible by the grantee against cargo shall be listed in separate tariffs for each service. Thus, tariffs for wharfage, handling, demurrage, storage, extra services, manipulation, loading and unloading, high piling, rental of equipment, minimum charges, etc., shall each show the application of the tariff, space and labor rates, commodity and description necessary to apply the particular tariff, modifications of the tariff, and such other information necessary for the determination of rates and charges for a particular service.

[Par. 6, Instr., Feb. 7, 1938]

§ 400.1013 Additional instructions.

(a) Duplication should be avoided. A commodity once named within the schedule with all rates, charges, rules and regulations applying in connection therewith, will be considered as the effective tariff in force until subsequently revised in the form provided by means of revised pages.

(b) The Foreign-Trade Zones Board shall be furnished with the original and seven copies of all schedules.

(c) Changes or additions in the form of revised pages shall be submitted to the Foreign-Trade Zones Board within 3 days after such changes have been made.

(d) All supplementary information concerning the quotation of rates and charges for commodities not within the schedule shall be furnished the Foreign-Trade Zones Board within 10 days after such quotations are made. This is in addition to the construction of the schedule and should not be confused therewith.

(e) All items carried in the schedule shall be numbered in consecutive sequence.

[Par. 7, Instr., Feb. 7, 1938]

§ 400.1014 Requirements for accounts, records, and reports.

Zone grantees shall maintain their accounts in accordance with generally accepted principles of accounting, and in compliance with any requirements of Federal, State, or local governmental agencies having appropriate jurisdiction over the grantee. As to other records and reports, applicable provisions of the Uniform System of Accounts, Records, and Reports, approved by the Board on February 6, 1939, shall remain in effect, as modified by instructions issued by the Executive Secretary concerning preparation of Annual Reports dated July 6, 1964. Records kept under the System shall be retained for 5 years after the merchandise covered by such records has been forwarded from the zone.

[Order 86, 36 FR 24930, Dec. 24, 1971]

USE OF GOVERNMENT PROPERTY

§ 400.1100 Use of Government property.

If the title to or right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions, approved by the Board and such department or officer as may be agreed upon.

VIOLATIONS OF PROVISIONS OF ACT OR REGULATIONS

§ 400.1200 Fine imposed for violation of act or regulations.

In case of a violation of the act or of any regulation under the act by the grantee, any officer, agent, or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than $1,000.

Each day during which a violation continues shall constitute a separate offense.

(Sec. 19, 48 Stat. 1003, 19 U.S.C. 81s)

§ 400.1201 Revocation of grant.

In the event of repeated willful violations by the grantee of any of the provisions of the act, the Board may revoke the grant after 4 months' notice to the grantee and after affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board, together with the decision reached thereon.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

§ 400.1202 Procedure for revocation.

In the conduct of any proceeding for the revocation of a grant the Board may compel the attendance of witnesses, the giving of testimony, and the production of documentary evidence; and for such purposes may invoke the aid of the district courts of the United States.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

§ 400.1203 Appeal from revocation order.

An order issued by the Board revoking the grant shall be final and conclusive, unless within 90 days after its service the grantee appeals to the circuit court of appeals for the circuit in which the zone is located is filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board, and it shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in the proceedings held before it, under section 18(c) of the act (48 Stat. 1002 18 U.S.C. 81r(c)), the charges, the evidence, and the order revoking the grant. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

RULES OF PROCEDURE AND PRACTICE

§ 400.1300 Headquarters.

The headquarters of the Board shall be the Department of Commerce, Washington, D.C.

§ 400.1301 Executive Secretary of the Board.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, shall appoint an Executive Secretary of the Foreign-Trade Zones Board. As principal operating official of the Board, the Executive Secretary shall:

(a) Represent the Board in all administrative, regulatory, and operational matters within the purview of the Board.

(b) Direct the execution of the orders of the Board.

(c) Initiate recommendations to the Board for overall administration of the Foreign-Trade Zones Act.

(d) Conduct periodic inspection of the zones.

(e) Provide information and advisory assistance to Federal, State, and Municipal agencies, to the business community, and to the general public.

(f) Arrange meetings of the Board and its Committees of Alternates, including provisions for minutes and necessary records.

(g) Maintain custody of the seal, records, files, and correspondence of the Board.

(h) Appoint staff members, including an Assistant Executive Secretary, who may act for him in his absence.

(i) Authorize in appropriate cases amendments to applications filed with the Board, except that no substantive changes may be authorized after notice of a public hearing, or an invitation for comments, has been published.

(j) Approve in appropriate cases, with the prior recommendations of the District Director of Customs and the District Engineer, requests for minor modifications to zone boundaries which will not result in an expansion of zone operations.

(k) Approve in appropriate cases, with the prior approval of the District Director of Customs, requests to permit the use of alternate fencing to that specified in § 400.403.

(l) Perform such other duties as may be required by the Secretary of Commerce, as Executive Officer of the Board, and as the Board may direct.

[Order 74, 32 FR 13714, Sept. 30, 1967, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1302 Committee of Alternates.

Each member of the Board shall designate an alternate to serve on a Committee of Alternates. The alternate of the chairman of the Board shall be chairman of the committee. The committee shall review and prepare all matters for presentation to the Board, shall hold such hearings and rehearings as may be directed by the chairman of the Board, and shall perform all other duties designated by the Board except such as are specifically imposed by law on the Board. The committee shall meet at the call of its chairman.

§ 400.1303 Transaction of Board business.

(a) Meetings of the Board will be held on call of the Chairman. Two members of the Board shall be necessary for a quorum.

(b) At the option of the Chairman, the Board may conduct its business, including voting, without an actual meeting being held, provided that no Board member has requested a meeting. When business is so conducted, Board members may communicate their views and recommendations by such means as telephone and memorandum, but the votes of members shall be made in writing and submitted to the Executive Secretary for entry in the voting record.

(c) Final votes of each Board member, including dissenting votes, will be recorded and the voting record shall be available for public inspection.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1304 Order of business.

The order of business at Board meetings shall be as follows:

(a) Reading of minutes of preceding meeting.

(b) Report of secretary of Board.

(c) Amendments to regulations or rules.

(d) Applications for grants or amendments to grants.

(e) Consideration of matters connected with operation, maintenance, or administration of zones.

(f) Miscellaneous business.

(g) Adjournment.

§ 400.1305 Authorization for hearings.

The Board, or its Chairman, may authorize hearings or rehearings. Such hearings will ordinarily be held before the Committee of Alternates. The Examiners Committee is authorized to hold hearings as provided in § 400.1309.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1306 Orders of Board.

Orders of the Board shall be made of record, numbered serially, and published from time to time for the information and guidance of all concerned.

§ 400.1307 Applications.

Upon receipt of an application, the Executive Secretary of the Foreign-Trade Zones Board will designate an examiner who will investigate the application and accompanying exhibits for compliance with the provisions of §§ 400.600 to 400.608.

[Order 47, 23 FR 5417, July 17, 1958]

§ 400.1308 Examiners Committee.

If the application and accompanying exhibits are in order, the Executive Secretary of the Foreign-Trade Zones Board will appoint an Examiners Committee and designate a chairman. This committee will consist of the examiner appointed by the Executive Secretary who has examined the application as provided in § 400.1307, the Regional Commissioner of Customs or his designee and the District Engineer in whose districts the proposed zone is to be located. The committee will then make a thorough investigation of the application and report its findings to the Board.

[Order 47, 23 FR 5417, July 17, 1958, as amended by Order 74, 32 FR 13715, Sept. 30, 1967]

§ 400.1309 Hearings before Examiners Committee.

In conducting its investigation the Examiners Committee is authorized to hold hearings and take evidence as provided in §§ 400.1316 through 400.1321.

§ 400.1310 Submission of further evidence.

Should the report of the Examiners Committee be unfavorable, notice will be sent to the applicant, who will be permitted to apply for permission of the Board to present further evidence in support of his application either orally, in writing, or both.

§ 400.1311 Rehearing on application.

Should the request of the applicant to submit further evidence be granted, the applicant will be notified and, if a hearing is desired, a date fixed therefor before the Committee of Alternates.

§ 400.1312 Action of Board on application.

After the Board's consideration of the application is completed, unless further information is required by the Board, the grant will be made or denied.

§ 400.1313 Payment for inspection.

The Board shall specify, and applicants and grantees shall pay, the cost of inspection of construction. Prior to the issuance of a grant, the applicant shall deposit promptly with the district engineer a certified check in an amount specified as prescribed above, covering such cost. Certified checks in amounts specified by the Board will also be required to be deposited promptly by grantees with the district engineer covering costs of subsequent inspections of major alternations. In the event the amount originally specified is insufficient to pay for the cost of inspection, the Board shall specify the additional amount or amounts required, which shall be paid promptly by the applicant or grantee, as the case may be. Such funds shall be carried in a special deposit account by the district engineer in accordance with existing law and regulations. If certified checks, which have been deposited, are in amounts in excess of the cost of supervision of construction, the district engineer shall refund such excess.

§ 400.1314 Construction of zone.

Construction will be under the supervision of the Secretary of the Army and Chief of Engineers; such supervision shall be exercised by the District Engineer who shall enforce compliance with the terms of the grant.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.1315 Evidence.

In its discretion, and upon its own motion or upon the motion of any interested party, the Board may give an opportunity to, or require, any party to any proceedings before the Board to present documentary or other written or oral evidence bearing upon any application, declaration, protest, petition, or complaint made to the Board. The Board may order that hearings be held for the purpose of taking testimony or receiving records not under the control of a party to proceedings before the Board, or for the purpose of taking testimony or producing records in connection with the establishment, operation, or maintenance of a zone, or with the conduct of any investigations appropriate to the administration of the act.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1316 Object of hearing.

The object of such hearing is to inform interested parties concerning the matter at issue and to give them an opportunity to express their views frankly, fully, and publicly relative thereto.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1317 Notice of hearing.

When the Board of Examiners Committee of the Board deems it advisable to hold a local hearing, notice of such hearing should be sent to all interested parties in time for them to be present in person or to be represented at the hearing, and a copy of the notice should be furnished local newspapers. The notice should state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place. For the accuracy of the record, all important facts and arguments should be submitted in writing. As soon as the date and place for a hearing have been designated, the official or Examiners' Committee should immediately advise the Board direct so that it may have available full information on the proceedings.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1318 Procedure at hearing.

The following general procedure will govern the conduct of hearings:

(a) Minutes of the proceedings will be made, and when deemed advisable, will be taken stenographically.

(b) A complete copy of the notice and a record of the names and addresses of all parties on whom served and the manner of service (whether by mail, telegraph, telephone, etc.), should be retained and made a part of the record.

(c) The presiding officer will impress upon all interested parties and will also specifically state at the commencement of the proceedings: first, the special purpose of the hearing; second, that it is desired to have a frank and full expression of the views of all interested parties and as complete a statement as possible of all information bearing upon the question at issue; third, that the Board will give full weight to all evidence and arguments presented at the hearing, and that all pertinent material which the parties wish considered should be brought out at the hearing; fourth, that later ex parte evidence and arguments are not desired by the Board unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing.

(d) The presiding officer should read aloud such parts of the act and of the rules and regulations adopted by the Board as bear on the matter at hand. He should also read such other important papers bearing on the case, or extracts therefrom, as may be necessary for a full understanding of the status of the case and the data before the Board.

(e) The names and addresses of all parties of interest present or represented at the hearing will be recorded.

(f) The presiding officer will then invite and conduct a thorough and candid discussion of the case in all its bearings.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1319 Adjournment of hearing.

If it is alleged by any person that more evidence exists which could not be properly prepared in time for the hearing, the presiding officer will, at his discretion, either adjourn the hearing for a reasonable period, or may delay transmitting his report until after the receipt of such evidence and the expiration of a reasonable period for its examination by other interested persons. In such cases, definite statements as to the amount of time desired should be required. If no further hearing is held, it should be required that any additional evidence be submitted in typewritten or printed form, and the party submitting it should be required to serve a copy thereof on such other parties in interest as appeared at the hearing and to furnish proof of such service for the record.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1320 Record of proceedings.

The record of the proceedings should be made in quadruplicate, 3 copies for the Board and 1 for the office of the presiding officer. The record should be accompanied by a copy of the notice and list of those present, briefs or exhibits submitted in the case, and the recommendations of the officer or committee conducting the hearing on the points raised at the hearing. All of the above papers should be properly marked for reference and when possible bound together and submitted as a single exhibit.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1321 Additional rules of practice.

Additional rules of procedure and practice in formal proceedings under the act, and of procedure in formal and informal proceedings, in elaboration or extension of those set forth herein, may be issued from time to time.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

PUBLIC INFORMATION

SOURCE: Order 74, 32 FR 13715, Sept. 30, 1967, unless otherwise noted.

§ 400.1400 Policy.

It is the policy of the Foreign-Trade Zones Board, consistent with the purposes of the Foreign-Trade Zones Act and the role of the Board as a regulatory agency, to furnish the public with information pertaining to the establishment, operation and administration of foreign-trade zones in the United States, except that such information as is exempted from the requirement for disclosure of 5 U.S.C. 552, as amended, ordinarily will not be made available to any person.

§ 400.1401 Public information activities.

The Executive Secretary of the Board shall conduct the following public information activities of the Board:

(a) Preparation and release of material published by or for the Board, including public announcements, items for publication in the FEDERAL REGISTER, news releases, and reports.

(b) Clearance for release of informational material from other agencies referred to the Board for review.

(c) Release of general information pertaining to Board activities, rules and regulations and, at his discretion, information contained in Board records as necessary to further the regular information dissemination activities of the Board.

(d) Development and direction of measures to provide the international business community with information pertaining to the establishment, operation and administration of U.S. Foreign-Trade Zones.

§ 400.1402 Availability of materials for inspection and copying.

(a) The Board shall utilize the facilities and services of the Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, DC 20230, to make available for public inspection and copying the materials required to be made available to the public by 5 U.S.C. 552(a)(2).

(b) Rules and procedures prescribing the hours of operation, location, fees, and other requirements for public inspection of records through the central facility are contained in Part 4 of this title.

§ 400.1403 Requests for identifiable records.

(a) The procedures of this section are applicable only to those records not customarily available to the public as part of the regular information activities of the Board.

(b) The Board shall utilize the facilities and services of the Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, DC 20230, to make available for public inspection and copying identifiable records which have been determined to be disclosable pursuant to 5 U.S.C. 552(a)(3).

(c) Rules and procedures prescribing the hours of operation, location, fees, and other requirements for public inspection of records through the central facility are contained in Part 4 of this title.

§ 400.1404 Determinations of availability of records.

(a) In accordance with the rules, regulations, and procedures governing the operation of the Central Reference and Records Inspection Facility of the U.S. Department of Commerce, a request for the determination of availability of a record of the Board will be referred to the Executive Secretary of the Board who shall initially determine:

(1) Whether the requested record can be identified on the basis of information contained in the request. If the record cannot be identified the request shall be returned to the person who

initiated it and he shall be advised why the record is not identifiable and what additional clarification, if any, he may submit to assist in the identification of the record.

(2) Whether the record, if identifiable, is still in existence or has been destroyed as provided by law, or is not in the possession of the Board. If the record no longer exists, the person who initiated the request will be notified, with the reason stated. If the record is not in the Board's possession and its existence is not otherwise reasonably ascertainable, the person who initiated the request shall be so notified. If the requested record is the exclusive or primary concern of another agency, the request for such record shall be promptly referred to that agency for further action under its rules, and the person who initiated the request shall be promptly informed of this referral.

(b) If a requested record is identifiable and is subject to determination of availability on the basis of disclosure requirements, the request shall be reviewed by the Executive Secretary of the Board to initially determine its availability. If he determines, as provided by law, that the record is not to be made available to the requesting person, said party shall be informed in writing of the specific reason(s) why the record is not being disclosed.

(c) If an identifiable record is to be made available for public inspection and copying, the person who requested access to the record shall be promptly advised of the availability of the record.

§ 400.1405 Requests for reconsideration of nonavailability.

(a) Any person whose request to inspect a record has been denied because the record was not to be made available for stated reason(s), may request a reconsideration of the initial denial in accordance with procedures set forth in Part 4 of this title.

(b) The decision upon such review shall be made by the Chairman of the Foreign-Trade Zones Board, and shall be based upon the original request, the denial, and any written argument submitted by the person requesting the review.

(c) The decision upon review shall be promptly made in writing and transmitted to the person requesting the review. If the decision is wholly or partly in favor of said person, the requested record to such extent shall be made available for inspection in accordance with § 400.1404(c). To the extent that the decision is adverse to the request, the reason(s) for the denial shall be stated.

(d) A decision upon review completed as provided herein shall constitute the final decision and action of the Board as to the availability of a requested record, except as may be required by court proceedings initiated pursuant to 5 U.S.C. 552(a)(3).

§ 400.1406 Security information.

Nothing in the regulations in §§ 400.1400 through 400.1406 should be construed to modify or supersede laws, rules, and regulations governing the release of information classified as security information.

CHAPTER VI—BUREAU OF INDUSTRIAL ECONOMICS, DEPARTMENT OF COMMERCE

Part *Page*
615 Determination of bona fide motor-vehicle manufacturer 32

PART 615—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Sec.

615.1 Scope and purpose.
615.2 Definitions.
615.3 Application.
615.4 Determination by the Director.
615.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

AUTHORITY: Headnote 2, subpart B, part 6, schedule 6, Tariff Schedules, United States (19 U.S.C. 1202) relating to the development maintenance, and publication of a list of bona fide motor-vehicle manufacturers, and authority to promulgate rules and regulations pertaining thereto under section 501(2) of Title V, Automotive Products Trade Act of 1965 (19 U.S.C. 2031).

SOURCE: 45 FR 42214, June 23, 1980, unless otherwise noted.

§ 615.1 Scope and purpose.

The purpose of this part is to set forth regulations implementing headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States as proclaimed by Proclamation No. 3682 of October 21, 1965 (3 CFR 140–65 Comp.). issued pursuant to the Automotive Products Trade Act of 1965 (19 U.S.C. 2031), by establishing a procedure under which a person may apply to be determined a bona fide motor-vehicle manufacturer. Under headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States, whenever the Secretary of Commerce has determined a person to be a bona fide motor-vehicle manufacturer, such person is eligible to obtain duty-free importation of certain Canadian articles and to issue certain orders, contracts, or letters of intent under or pursuant to which other persons, not themselves bona fide motor-vehicle manufacturers, may obtain duty-free treatment for such Canadian articles. The responsibilities of Secretary of Commerce relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers and the authority to promulgate rules and regulations pertaining thereto have been delegated to Director, Bureau of Industrial Economics, Department of Commerce pursuant to Department of Commerce Organization Order 35-5A of January 3, 1980 (45 FR 6146), with power of redelegation.

§ 615.2 Definitions.

For the purpose of the regulations in this part and the forms issued to implement it:

(a) "Act" means the Automotive Products Trade Act of 1965 (79 Stat. 1016 19 U.S.C. 2001 through 2033).

(b) "Director" means Director, Bureau of Industrial Economics of the Department of Commerce, or such official as may be designated by the Director to act in his or her behalf.

(c) "Motor vehicle" means a motor vehicle of a kind described in item 692.05 or 692.10 of subpart B, part 6, schedule 6, of the Tariff Schedules of the United States (excluding an electric trolley bus and a three-wheeled vehicle) or an automotive truck tractor.

(d) "Bona fide motor-vehicle manufacturer" means a person who upon application to the Director is determined by the Director to have produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application, and to have had as of such date installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. A person shall only be regarded as having had the capacity to produce a complete motor vehicle if his operation included the assembly of two or more major components (e.g., the attachment of a body to a chassis) to create a new motor vehicle ready for use.

(e) "Person" includes any individual, corporation, partnership, association, company, or any kind of organization.

(f) "United States" includes only the States, the District of Columbia and Puerto Rico.

§ 615.3 Application.

Any person in the United States desiring to be determined a bona fide motor vehicle manufacturer shall apply to the Director by filing two copies of Form BIE-3 in accordance with the instructions set forth on the form and this part. Application forms may be obtained from the Director, District offices of the U.S. Department of Commerce, or from U.S. Collectors of Customs, and should be mailed or delivered to the:

Transportation Equipment Division, OPG,
Bureau of Industrial Economics, U.S. Department of Commerce, Washington, DC
20230.

§ 615.4 Determination by the Director.

(a) As soon as practicable after receipt of the application, the Director shall determine whether an applicant has produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application and as of such date, had installed capacity in the United States to produce 10 or more complete motor vehicles per 40 hour week. The Director may request such additional data from an applicant as he may deem appropriate to establish whether the applicant has satisfied the requirements of this part.

(b) A determination by the Director under this part shall be effective for a 12-month period to begin on the date as of which the Director determines that the applicant qualified under this part. Within 60 days prior to the termination of such period, a bona fide motor vehicle manufacturer may apply for another determination under this part.

(c) The Director will promptly notify each applicant in writing of the final action taken on his application.

§ 615.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

The Director shall maintain and publish from time to time in the FEDERAL REGISTER, a list of the names and addresses of bona fide motor vehicle manufacturers, and the effective dates from each determination.

CHAPTER VIII—BUREAU OF ECONOMIC ANALYSIS, DEPARTMENT OF COMMERCE

Part		*Page*
802	Annual reporting of revenues for carrying imports to, and expenditures in, the United States of shipping and air transport operators of foreign nationality	36
803	Reports on international transactions in royalties and fees with unaffiliated foreign residents	37
806	Direct investment surveys	38
807	Public information	53

PART 802—ANNUAL REPORTING OF REVENUES FOR CARRYING IMPORTS TO, AND EXPENDITURES IN, THE UNITED STATES OF SHIPPING AND AIR TRANSPORT OPERATORS OF FOREIGN NATIONALITY

Sec.
802.1 Who must report.
802.2 Forms to be used.
802.3 Information to be furnished.
802.4 Time and place of filing reports.
802.5 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: R.S. 161; 5 U.S.C. 301; Interpret or apply sec. 8, 59 Stat. 515; 22 U.S.C. 286f, E.O. 10033, 14 FR 561, 3 CFR 1949 Supp.

SOURCE: 17 FR 4922, May 30, 1952, unless otherwise noted. Redesignated at 18 FR 8111, Dec. 10, 1953.

§ 802.1 Who must report.

(a)(1) A report is required from or on behalf of every foreign individual or organization incorporated, licensed or otherwise granted permission in countries other than the United States to operate vessels or aircraft if engaged in carrying goods or passengers to or from the United States. Agents or operating agents must respond where acting for foreign operators, unless the operator has his own office in the United States to which the agent is accountable or unless the operator elects to report directly from his home office.

(2) The Department of Commerce may in lieu of individual reports required under this part, accept consolidated reports from foreign governments covering the operations of their national shipping concerns when, in its discretion, such consolidated reports would provide the information required by this part. Where such reports are accepted, the individual reports from operators or their agents will not be required.

(b) The foreign operator, for purposes of this part, means the owner, managing or operating owner, chartered owner, or subchartered owner who enters into and carries out any form of transportation contract with the shippers of merchandise or with passengers.

(c) If foreign-owned vessels or aircraft are chartered to other foreign operators, the owner should report his expenses in the United States, if any, and the operator should report the freight or charter revenue earned from the shippers of merchandise and his expenses in the United States.

(d) If foreign-owned vessels or aircraft are chartered to a United States operator, the owner should report his expenses in the United States, if any.

(e) Reports submitted by agents should include all disbursements accounted for directly by them to the foreign company at its foreign office; if subagents report through a principal agent in the same or another location, the principal agent should file a consolidated report on behalf of the foreign company.

§ 802.2 Forms to be used.

Vessel operators shall report on Form BE-29,[1] Aircraft operators shall report on Form BE-36.[1]

§ 802.3 Information to be furnished.

The information required for balance-of-payments purposes consists of the earnings of foreign operators from the carriage of imports into the United States and their total expenses incurred in the United States on both passenger and freight operations, including overhead. Voluntary replies to questions 5, 6, 7 and 8 on Form BE-29 (vessel operators) regarding earnings on exports and movements in accounts due to or payable from home offices of foreign branches in the United States are requested but are not required by law.

§ 802.4 Time and place of filing reports.

Reports shall be filed annually on or before March 31 of each year to cover operations of the preceding calendar year, except that a report covering operations for 1951 shall be filed on or before June 30, 1952. Reports shall be filed with the Department of Commerce, Bureau of Economic Analysis, Balance of Payments Division, Washington, DC 20230.

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[1] Filed with the Office of the Federal Register as part of the original document.

[17 FR 4922, May 30, 1952. Redesignated at 18 FR 8111, Dec. 10, 1953, and amended at 39 FR 44441, Dec. 24, 1974]

§ 802.5 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
802.1 through 802.4	0608-0012 0013

[48 FR 56944, Dec. 27, 1983]

PART 803—REPORTS ON INTERNATIONAL TRANSACTIONS IN ROYALTIES AND FEES WITH UNAFFILIATED FOREIGN RESIDENTS

Sec.
803.1 Purpose.
803.2 Who must report.
803.3 Form to be used, frequency of reports, and place of filing.
803.4 Exemption.
803.5 General definitions.
803.7 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

Authority: (Sec. 8(b), Bretton Woods Agreement Act. 59 Stat. 515 (22 U.S.C. 286f; sec. 4(b), 22 U.S.C. 286f Federal Act (44 U.S.C. 3509)).

Source: 42 FR 64314, Dec. 22, 1977, unless otherwise noted.

§ 803.1 Purpose.

Reports on Form BE-93 are required in order to provide reliable and up-to-date information on international transfers of intangible assets and proprietary rights with unaffiliated foreign residents for use in compiling the U.S. balance of payments.

§ 803.2 Who must report.

United States individuals and firms who have entered into agreements with unaffiliated foreign residents, including governments of foreign countries, to sell or buy outright or provide or be provided with the use of intangible assests or rights such as patents, techniques, processes, formulae, designs, trademarks, copyrights, franchises, manufacturing rights, film rentals, and other similar intangible property or rights shall report on Form BE-93.

Note: Oil royalties and other natural resources (mining) royalties are not reportable on this form.

§ 803.3 Form to be used, frequency of reports, and place of filing.

(a) One Form BE-93 is to be filed annually by each United States person or firm receiving from unaffiliated foreign residents, or paying to unaffiliated foreign residents, royalties, licensing fees, film rentals, etc., arising from the use, purchase, or sale of intangible assets or rights. Reports should be sent to the Department of Commerce, Bureau of Economic Analysis, BE-58, Washington, DC 20230 within 90 days after the close of the calendar or fiscal year.

(b) Requests for extension of the filing dates, additional forms, or classifications of the reporting requirements or instructions should be directed to the same address.

(c) Consolidated reports for each company and its domestic affiliates are preferred. Please list on an attachment names of affiliates whose transactions are consolidated on this form. Also list names of affiliates with reportable transactions not consolidated on this form.

§ 803.4 Exemption.

A U.S. individual or business firm otherwise required to report is exempted if his annual foreign receipts and payments, combined, of the types covered by Form BE-93, are less than $25,000 in the year covered by the report.

§ 803.5 General definitions.

(a) *U.S. resident.* Any person, including corporations, unincorporated business organizations, partnerships, individuals, trusts and estates, under the jurisdiction of the U.S. and ordinarily residing in the U.S., including territories and possessions.

(b) *U.S. subsidiary or affiliate.* For purposes of Form BE-93, any U.S. incorporated enterprise in which more than 50 percent of the voting stock is directly or indirectly held by another U.S. company.

(c) *Unaffiliated foreign resident,* means: (1) With reference to ownership by a U.S. resident in a foreign business enterprise, any enterprise in which the U.S. resident holds less than 10 percent, directly or indirectly of the voting stock if an incorporated foreign enterprise, or an equivalent interest if an unincorporated foreign enterprise; and

(2) With reference to ownership in a U.S. business enterprise by a foreign resident, any enterprise in which the foreign resident holds less than 10 percent, directly or indirectly, of the voting stock if an incorporated U.S. enterprise, or an equivalent interest if an unincorporated U.S. enterprise.

§ 803.7 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
803.1 through 803.6	0608-0017

[48 FR 56944, Dec. 27, 1983]

PART 806—DIRECT INVESTMENT SURVEYS

Sec.
806.1 Purpose.
806.2 Recordkeeping requirements.
806.3 Reporting requirements.
806.4 Response required.
806.5 Confidentiality.
806.6 Penalties.
806.7 General definitions.
806.8 Real estate.
806.9 Airlines and ship operators.
806.10 Determining place of residence and country of jurisdiction of individuals.
806.11 Estates, trusts, and intermediaries.
806.12 Partnerships.
806.13 Miscellaneous.
806.14 U.S. direct investment abroad.
806.15 Foreign direct investment in the United States.
806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1982.
806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1980.
806.18 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 301, 22 U.S.C. 3101, and E.O. 11961, unless otherwise noted.

SOURCE: 42 FR 64315, Dec. 22, 1977, unless otherwise noted.

§ 806.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program and analyses concerning direct investment as required by, or provided for in, the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108), hereinafter "the Act". The overall purpose of the Act is to provide comprehensive and reliable information pertaining to international investment, including direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 806.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 806.3 Reporting requirements.

(a) In accordance with section 5 (b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from among others, U.S. persons which have direct investment abroad, U.S. persons in which foreign persons have direct investment, U.S. intermediaries, and U.S. persons which assist or intervene in the purchase or sale of direct investment interests, such as real estate brokers and brokerage houses acting as managers of tender offers.

§ 806.4 Response required.

Reports, as specified below, are required from all persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts, either by sending them report forms or buy written inquiry concerning the person's being subject to the reporting requirements of a survey conducted pursuant to this part must respond in writing. The reponse must be made by filing the properly completed report form, or by submitting in writing, or within 30 days of being contacted, a valid exemption claim (including the situation where the statistical data requested on the form are not applicable) or by certifying in writing to the fact that the person has no direct investments within the purview of the Act or the regulations contained herein. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 806.5 Confidentiality.

Information collected pursuant to § 806.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 806.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 806.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or required by § 806.3 or to comply with any other rule, regulation, order or instruction promulgated under the Act may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6(a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or required by § 806.3 or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisioned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 806.5 relating to confidentiality, shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§ 806.7 General definitions.

(a) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(c) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(d) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(e) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(f) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(g) "Parent" means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(h) "Affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(i) "International investment" means (1) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person;

(j) "Direct investment" means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise;

(k) "Portfolio investment" means any international investment which is not direct investment;

(l) "Associated group" means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a business enterprise. Each of the following are deemed to be an associated group:

(1) Members of the same family,

(2) A business enterprise and one or more of its officers and directors,

(3) Members of a syndicate or joint venture, or

(4) A corporation and its domestic subsidiaries;

(m) "Branch" means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity; and

(n) "Intermediary" means an agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978; 46 FR 23226, Apr. 24, 1981]

§ 806.8 Real estate.

Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements of this part. A residence which was an owner's primary residence that is then leased by the owner while outside his/her country of usual residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use. If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

[46 FR 23226, Apr. 24, 1981]

§ 806.9 Airlines and ship operators.

Foreign stations, ticket offices, and terminal and port facilities of U.S. airlines and ship operators; and U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators; which provide services only to their own operations are exempted from being reported. Reports are required when such affiliates produce significant revenues from services provided to unaffiliated persons.

§ 806.10 Determining place of residence and country of jurisdiction of individuals.

An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

(a) Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.

(b) Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in paragraph (c) of this section.

(c) Notwithstanding paragraph (b) of this section, if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.

(d) Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed forces, etc.—are considered to be residents of their country of citizenship.

§ 806.11 Estates, trusts, and intermediaries.

(a) An estate, either U.S. or foreign, is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

(b) A trust, either U.S. or foreign, is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined in paragraph (c) of this section. For reporting purposes, the beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed below or if there is, or may be, a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. Where a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust has evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this part and does not imply that control over an enterprise owned or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

(c) Intermediary. (1) If a particular U.S. direct investment abroad is held, administered, or managed by a U.S. intermediary, such intermediary shall be responsible for reporting the required information for, and in the name of, its principal or shall instruct the principal to submit the required information. Upon instructing the principal, the intermediary shall be released from further liability to report provided it has informed this bureau of the date such instructions were given and the name and address of the principal, and has supplied the principal with any information in the possession of, or which can be secured by, the intermediary, that is necessary to permit the principal to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with the foreign affiliate shall be considered as accounts or transactions of the U.S. principal with the foreign affiliate. To the extent such transactions or accounts are unavailable to the principal, they may be required to be reported by the intermediary.

(2) If a U.S. person holds a foreign affiliate through a foreign intermediary, the U.S. person will be considered to own the foreign affiliate directly and all accounts or transactions of the U.S. person with the intermediary will be considered to be with the foreign affiliate.

(3) If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.

(4) If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent but, when requested, must also identify and furnish information concerning the foreign beneficial owner, if known, or if such information can be secured. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978]

§ 806.12 Partnerships.

Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partners.

§ 806.13 Miscellaneous.

(a) *Accounting methods and records.* Generally accepted U.S. accounting principles should be followed. Corporations should generally use the same methods and records that are used to generate reports to stockholders, unless otherwise specified in the reporting instructions for a given report form. Reports for unincorporated persons must be generated on an equivalent basis.

(b) *Annual stockholder's report.* Business enterprises issuing annual reports to stockholders are requested to furnish a copy of their annual reports to this Bureau.

(c) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempted. When only partial information is available, an appropriate indication should be given.

(d) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(e) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line instruction.

(f) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item number and the form.

(g) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in hardship cases, written requests for an extension will be considered provided they are received 15 days prior to the date of the report and enumerate substantive reasons necessitating the extension.

(h) *Number of copies.* A single original copy of each report shall be filed with the Bureau of Economic Analysis; this should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report. Both copies are protected by law; see § 806.5.

(i) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form. General inquiries should be directed to the:

U.S. Department of Commerce, Bureau of
Economic Analysis, International Investment Division (BE-50), Washington, DC
20230.

§ 806.14 U.S. direct investment abroad.

(a) *Specific definitions.* (1) "U.S. direct investment abroad" means the ownership or control, directly or indirectly, by one U.S. person of 10 per centum or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

(2) "U.S. Reporter" means the U.S. person which has direct investment in a foreign business enterprise, including a branch. If the U.S. person is an incorporated business enterprise, the U.S. Reporter is the fully consolidated U.S. domestic enterprise consisting of (i) the U.S. corporation whose voting securities are not owned more than 50 percent by another U.S. corporation, and (ii) proceeding down each ownership chain from that U.S. corporation, any U.S. corporation (including Domestic International Sales Corporations) whose voting securities are more than 50 percent owned by the U.S. corporation above it.

(3) "Foreign affiliate" means an affiliate located outside the United States in which a U.S. person has direct investment.

(4) "Majority-owned foreign affiliate" means a foreign affiliate in which the combined "direct investment interest" of all U.S. Reporters of the affiliate exceeds 50 per centum.

(b) *Foreign affiliate consolidation.* In cases where the recordkeeping system of foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply:

(1) The affiliates are in the same BEA 3-digit industry as defined in the Industry Classifications and Export and Import Trade Classifications Booklet; or

(2) The affiliates are integral parts of the same business operation. For example, if German affiliate A manufactures tires and a majority of its sales are to German affiliate B which

produces autos, then affiliates A and B may be consolidated.

Any affiliates consolidated shall thereafter be considered to be one affiliate and should be consolidated in the same manner for all reports required to be filed pursuant to this section.

(c) *Reports required.* The place and time for filing, and specific instructions and definitions relating to, a given report form are given on the form. Reports are required even though a foreign affiliate may have been established, acquired, seized, liquidated, sold, expropriated, or inactivated during the reporting period.

(d) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, net sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a U.S. Reporter claiming exemption from filing a given form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption-level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed, the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year.

(3) For the semi-annual plant and equipment expenditures survey, which requests actual data for the past year and/or annual projections for the current and following year, the test will be made for each year as to whether any one of the three items exceeded, or is expected to exceed, the exemption level; data must be reported only for the year or years in which the exemption level is, or is expected to be, exceeded.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level, and other reporting criteria, if any, pertaining to it, are given below.

(e) *Quarterly report form.* (1) BE-577—Transactions of U.S. Reporter with Foreign Affiliate: One report is required for each foreign affiliate exceeding an exemption level of $10,000,000 except that a report need not be filed by a U.S. Reporter to report direct transactions with one of its foreign affiliates in which it does not hold a direct equity interest unless an intercompany balance or fee and royalty receipts or payments for the quarter exceed $1,000,000.

(f) *Annual report forms.* (1) BE-133B—Follow-up Schedule of Expenditures for Property, Plant and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of $8,000,000 must be listed and the requested data given for each.

(2) BE-133C—Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of $8,000,000 must be listed and the requested data given for each.

(3) BE-11—Annual Survey of U.S. Direct Investment Abroad: A report, consisting of Forms BE-11A, BE-11B, and BE-11C, is required of each nonbank U.S. Reporter who, at the end of the Reporter's fiscal year, had a non-

bank foreign affiliate reportable on Form BE-11B or BE-11C. Forms required and the criteria for reporting on each are as follows:

(i) A Form BE-11A (Report for U.S. Reporter) must be filed by each nonbank U.S person having a foreign affiliate reportable on Form BE-11B or BE-11C.

(ii) A Form BE-11B (Report for Majority-owned Foreign Affiliate) is required to be filed for each majority-owned nonbank foreign affiliate for which any *one* of the exemption level items exceeds $10,000,000.

(iii) A Form BE-11C (Report for Minority-owned Foreign affiliates) must be filed to report selected items for each minority-owned nonbank foreign affiliate owned at least 25 percent, directly or indirectly by the U.S. Reporter but not more than 50 percent by all U.S. Reporters of the affiliate combined and for which any *one* of the exemption level items exceeds $10,000,000.

(iv) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) None of its exemption level items is above $10.0 million.

(B) It is less than 25 percent owned, directly or indirectly, by the U.S. person.

(C) Its U.S. parent (U.S. Reporter) is a bank.

(D) It is itself a bank.

(g) *Other report forms.* (1) BE-507—Industry Classification Questionnaire: In general, U.S. Reporters and their foreign affiliates will each be assigned a BEA 3-digit industry code in the BE-10 Benchmark Surveys required by the Act to be conducted at least once every five years. However, interim reports on Form BE-507 are required:

(i) For each foreign affiliate newly established or acquired by a U.S. person on or after January 1, 1978; or

(ii) For each U.S. person who becomes a U.S. Reporter on or after January 1, 1978 by virtue of establishing or acquiring a foreign affiliate; or

(iii) For an existing foreign affiliate or U.S. Reporter whose industry classification changes on or after January 1, 1978 so that a previous BE-507 report or the BE-10 report required to be filed for 1977 does not accurately reflect the current industry classification of the entity.

For new U.S. Reporters or foreign affiliates, the BE-507 report must be filed only if one of the other reports must be filed and shall be submitted with the initial filing of the related report. For a change in an existing U.S. Reporter or foreign affiliate which is currently filing one of the other reports, the BE-507 report must be filed whenever it is determined that change from one 3-digit industry classification to another has occurred.

(2) BE-10—Benchmark Survey of U.S. Direct Investment Abroad: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad shall be conducted at least once every five years. The survey, referred to as the "BE-10," consists of Form BE-10A for reporting information concerning the U.S. Reporter and Form BE-10B for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of coverage of, a given BE-10 Survey may be found in § 806.16.

(5 U.S.C. 301, 22 U.S.C. 3101-3108, E.O. 11961)

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 46 FR 23226, Apr. 24, 1981; 47 FR 13139, Mar. 29, 1982; 48 FR 8993, Mar. 3, 1983; 49 FR 30059, July 26, 1984]

§ 806.15 Foreign direct investment in the United States.

(a) *Specific definitions.* (1) "Foreign direct investment in the United States" means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

(2) "U.S. affiliate" means an affiliate located in the United States in which a foreign person has a direct investment.

(3) "Foreign parent" means the foreign person, or the first person outside the United States in a foreign chain of

ownership, which has direct investment in a U.S. business enterprise, including a branch.

(4) "Affiliated foreign group" means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

(5) "Foreign affiliate of foreign parent" means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

(6) "Ultimate beneficial owner (UBO)" is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

(b) *Beneficial, not record, ownership is the basis of the reporting criteria.* In those cases where a U.S. affiliate is also required to identify the ultimate beneficial owner (UBO) of the foreign investment, if the UBO is an individual, only the country of location of the individual must be given.

(c) *Bearer shares.* If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with nonpublicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) *Aggregation of real estate investments.* A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

(e) *Consolidated reporting by U.S. affiliates.* A U.S. affiliate shall file on a fully consolidated basis, including in the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 per centum of the outstanding voting stock, unless the instructions for a given report form specifically provide otherwise. However, separate reports may be filed where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA.

(f) The place and time for filing, and specific instructions and definitions relating to, a given report form will be given on the report form. Reports are required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

(g) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a person claiming exemption from filing a given report form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test, reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level and other reporting criteria, if any, pertaining to it, are given below.

(h) *Quarterly report forms.* (1) BE-605—Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $10,000,000.

(2) BE-606B—Transactions of U.S. Banking Branch or Agency with Foreign Parent: One report is required for each U.S. banking affiliate exceeding an exemption level of $10,000,000.

(i) Annual report form. BE-15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a bank, exceeding an exemption level of $10,000,000. U.S. affiliates that are banks are exempt from the reporting requirements of this survey.

(j) *Other report forms.* (1) BE-607—Industry Classification Questionnaire: In general, a U.S. affiliate will be assigned a BEA 3-digit industry code in the BE-12 Benchmark Surveys required by the Act to be conducted at least once every five years. However, interim reports on Form BE-607 are required:

(i) For each U.S. affiliate newly established or acquired by a foreign person; or

(ii) For an existing U.S. affiliate whose industry classification changes so that either a previous BE-607 report or the last BE-12 report required to be filed does not accurately reflect the current industry classification of the U.S. affiliate.

For new U.S. affiliates, the BE-607 report must be filed only if the affiliate must file one of the other reports and shall be submitted with the initial filing of the related report. For a change in an existing U.S. affiliate which is currently filing one of the other reports, the BE-607 report must be filed whenever it is determined that a change from one BEA 3-digit industry classification to another has occurred.

(2) BE-12—Benchmark Survey of Foreign Direct Investment in the United States: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of foreign direct investment in the United States shall be conducted at least once every five years. The survey is referred to as the "BE-12". Exemption levels, specific requirements for, and the year of coverage of, a given BE-12 Survey may be found in § 806.17.

(3) BE-13—Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate. This report is to be filed either:

(i) By a U.S. business enterprise when a foreign person establishes or acquires directly, or indirectly through an existing U.S. affiliate, a 10 percent or more voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing U.S. business enterprise that is then organized as a separate legal entity; or

(ii) By the existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that the existing U.S. affiliate merges into its own operations rather than continuing or organizing as a separate legal entity.

A separate report must be filed for each foreign parent or existing U.S. affiliate that is a party to the transaction.

EXCLUSIONS AND EXEMPTIONS

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

(b) An existing U.S. affiliate is exempt from reporting the acquisition of either a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that it then merges into its own operations, if the total cost of the acquisition was $1,000,000 or less and does not involve the purchase of 200 acres or more of U.S. land. (If the acquisition involves the purchase of 200 acres or more of U.S. land, it must be reported regardless of the total cost of the acquisition.)

(c) An established or acquired U.S. business enterprise, as consolidated, is exempt if its total assets (not the foreign parent's or existing U.S. affiliate's share) at the time of acquisition or immediately after being established were $1,000,000 or less and it does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, it must report regardless of the value of total assets.)

If exempt under (b) or (c), the existing U.S. affiliate or the established or acquired U.S. business enterprise must, nevertheless, file an "Exemption Claim, Form BE-13" to validate the exemption.

(4) Form BE-14—Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture With, a Foreign Person—to be completed either by:

(i) A U.S. person—including, but not limited to, an intermediary, a real estate broker, business broker, and a brokerage house—who assists or intervenes in the sale to, or purchase by, a foreign person or a U.S. affiliate of a foreign person, of a 10 percent or more voting interest in a U.S. business enterprise, including real estate; or

(ii) A U.S. person who enters into a joint venture with a foreign person to create a U.S. business enterprise.

A U.S. person is required to report only when such a foreign involvement is known; it is not incumbent upon the U.S. person to ascertain the foreign status of a person involved in an acquisition unless the U.S. person has reason to believe the acquiring party may be a foreign person. If a U.S. person required to file a Form BE-14 files Form BE-13 relating to the acquisition of the U.S. business enterprise by a foreign person, then Form BE-14 is not required.

Total Exemptions—(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate for personal use.

(b) If the U.S. business enterprise acquired has total assets of, or if the capitalization (including loans from the joint venturers) of the joint venture to be established is, $1,000,000 or less, than no report is required, provided the enterprise does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, a report is required regardless of the value of total assets.)

(5) BE-21—Survey of Foreign Direct Investment in U.S. Business Enterprises Engaged in the Processing, Packaging, or Wholesale Distribution of Fish or Seafoods. Reporting consists of:

(i) Form BE-21P—Identification Questionnaire. A completed questionnaire is required from (*a*) each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods, and (*b*) any person to whom a questionnaire is sent by BEA.

(ii) Form BE-21A—Report for a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required from each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

(iii) Form BE-21B—Report for each Establishment of a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required for each establishment, of the U.S. affiliate, that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

(Pub. L. 94-472, 22 U.S.C. 3101-3108; 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961)

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984]

§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1982.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad, will be conducted covering 1982. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13, 806.14 (a), (b), (c), (d) and (g)(2) are applicable to this Survey. Specific additional rules and regulations for the BE-10 Survey concerning who must report and forms required are given below.

(a) *Basic requirement.* A BE-10 report is required from every U.S. person having a foreign affiliate—that is, every U.S. person having direct or indirect ownership or control of at least 10 per centum of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 1982 fiscal year. A business enterprise's 1982 fiscal year is the enterprise's financial reporting year that has an ending date in calendar year 1982. For a person that does not have a financial reporting year, or does not have a financial reporting year ending in calendar year 1982, its 1982 fiscal year is deemed to be the same as calendar year 1982. Reports are required even though the foreign business enterprise may have been established, acquired, seized, liquidated, sold, expropriated, or inactivated during FY 1982.

(b) *Form BE-10A (Report for U.S. Reporter).* (1) Filing—A completed Form BE-10A is required from each U.S. Reporter (see definition). Exception: When a U.S. business enterprise owns a foreign affiliate and the U.S. business enterprise is owned more than 50 per centum by a U.S. individual, the report should be filed by, and Form BE-10A data should be for, the business enterprise rather than the individual. Any direct transactions with, or positions in, the foreign affiliate by the individual must be included in the U.S. business enterprise's report.

(2) Partial exemption when all foreign affiliates are exempt—When there are foreign affiliates, but all are exempt from filing Form BE-10B, then only items 1 through 4 of Form BE-10A, and Form BE-10A SUPPLEMENT, which lists exempt foreign affiliates, must be completed and filed.

(3) Partial exemption based on type of U.S. Reporter—U.S. Reporters that are religious, charitable, or other nonprofit organizations and individuals who directly own a foreign affiliate are required to file Form BE-10A, completing in Part I (Identification of U.S. Reporter), only items 1, 2, 8, 9, and 12; the remaining items in Part I and all items in Part II (Financial and Operating Data of U.S. Reporter) need not be completed.

(c) *Form BE-10B (Report for Foreign Affiliate).* (1) Filing—A U.S. person is required to file one Form BE-10B for each foreign affiliate which is not exempt pursuant to paragraph (c)(2) of this section. (Under those limited conditions where foreign affiliates may be consolidated, the consolidated entity is considered to be one foreign affiliate.) To determine whether, for purposes of reporting, a given foreign business enterprise is considered its foreign affiliate, a U.S. person should sum its percentages of voting ownership through all lines, or chains of ownership, direct and indirect. If the resulting sum is at least 10 percent, then the enterprise is the U.S. person's foreign affiliate and, unless otherwise exempt, must be reported. In the case of a line of indirect ownership, the U.S. person's percentage ownership in a given foreign business enterprise should be computed as its direct ownership percentage in the first foreign business enterprise in the chain, multiplied by that first enterprise's direct ownership percentage in the second enterprise in the chain, multiplied by the second enterprise's direct ownership percentage in the third enterprise in the chain, multiplied by the corresponding percentages for all other intervening enterprises in the chain, multiplied by the last intervening enterprise's direct ownership percentage in the given foreign business enterprise. To illustrate, suppose that the U.S. person owned 50 percent of foreign business enterprise A directly, and that A owned 75 percent of foreign business enterprise B that, in turn, owned 80 percent of foreign business enterprise C. Then the U.S. person's percentage of indirect ownership of B would be 37.5 percent (the product of the first two percentages), its indirect ownership of C would be 30 percent (the product of all three percentages), and B and C (as well as A) would be considered the U.S. person's foreign affiliates.

(2) Total exemption—A Form BE-10B need not be filed if the foreign affiliate's total assets, sales or gross operating revenues excluding sales taxes, and not income after provison for foreign income taxes, are each (i.e., all three are) less than $3,000,000.00 (positive or negative), and the foreign affiliate does not own another foreign affiliate for which a Form BE-10B must be filed. If the latter condition is not met, then Form BE-10B must be filed for the foreign affiliate holding the equity interest regardless of the value of its assets, sales, or net income. That is, all affiliates upward in a chain of ownership must be reported. An affiliate's receivables due from its parent may not be eliminated from total assets when applying the exemption criteria.

(3) Number of Forms BE-10B required—If two or more U.S. Reporters jointly own a foreign affiliate, directly or indirectly, each U.S. Reporter must submit a Form BE-10B for the affiliate. The U.S. Reporter having the highest percentage ownership (direct and indirect combined) in the foreign affiliate must file a Form BE-10B in which all Parts, including either Part IV or Part V as required, have been completed; and the other U.S. Reporter(s) must file a Form BE-10B in which only Part I, items 1 through 25, and Part III, if there is direct ownership or direct financial positions or transactions, have been completed. If the ownership percentages are the same, the U.S. Reporters must decide among themselves which one will submit the complete report.

(4) Foreign affiliate consolidation—In cases where the recordkeeping system of the foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply:

(i) The affiliates are in the same BEA 3-digit industry, as defined in the *Direct Investment Industry and Foreign Trade Classifications Booklet;* or

(ii) The affiliates are integral parts of the same business operation. For example, if German affiliate A manufactures tires and a majority of its sales are to German affiliate B which produces autos, then affiliates A and B may be consolidated.

Under no circumstances may a U.S. Reporter consolidate foreign affiliates in different countries.

(d) *Relationship between Forms BE-10A and BE-10B.* The term "U.S. Reporter" as defined means the fully consolidated U.S. domestic enterprise; therefore, on Form BE-10B, when data on trade and financial relationships between the U.S. Reporter and the foreign affiliate are requested, the data must reflect the foreign affiliate's relationship with the entire U.S. enterprise, not merely with one division, operating unit, or part.

(e) *Specialized report forms for banks.* Specialized report forms have been adopted for banks (that is, for business enterprises over 50 percent of whose total revenues are generated by activities classified in DI industry code 600), because much of the information on banks' foreign activities which is requested on the standard forms is already being reported to other agencies of the Federal Government. The specialized report forms are designed to yield only such additional information as is deemed necessary. Use of specialized Forms BE-10A BANK and BE-10B BANK is at the discretion of BEA; in situations where their possible use is not clear-cut, permission must be secured from BEA in advance of filing.

(1) Form BE-10A BANK has been developed for reporting by a U.S. Reporter that is a bank or a bank holding company. It is not to be used by a U.S. Reporter that may technically be classified as a bank holding company because of an interest in a banking activity, but that has over 50 percent of it revenues generated by non-bank activities. (Activities of subsidiaries that may not be banks but that provide support to the parent company, such as real estate subsidiaries set up to hold the office building occupied by the parent company, are considered bank activities.)

(2) Form BE-10B BANK is for reporting of a foreign affiliate that is a bank and in which the U.S. Reporter holds a direct and/or indirect ownership interest. However, a foreign bank affiliate of the U.S. Reporter in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less is exempt from being reported on Form BE-10B BANK, but must be listed on Form BE-10A SUPPLEMENT. Incorporated foreign bank affiliates in which the U.S. Reporter holds a direct equity interest, or an indirect equity interest of more than 50 percent, must be separately reported. All branch banks of the U.S. Reporter in a given foreign country must be consolidated on one Form BE-10B BANK even if it is the Reporter's practice to report data for these branches separately on Federal Reserve Form FR105f or on Comptroller of the Currency Form CC7610-09.

(3) A U.S. Reporter that is a bank, but that has a nonbank foreign affiliate, must file a Form BE-10A BANK for itself and a standard Form BE-10B for the nonbank foreign affiliate.

(4) A U.S. reporter that is not a bank, but that has a bank foreign affiliate, must file a standard Form BE-10A for itself and a Form BE-10B BANK for the bank foreign affiliate.

(5) Banks located on U.S. military bases abroad and servicing base personnel are not considered "foreign" and a Form BE-10B BANK should *not* be filed for them.

(6) The specialized report forms, where their use is permitted, replace the standard forms, and the regulations and instructions should be so construed.

(f) *Due date.* BE-10 reports comprising both Form BE-10A and Form(s) BE-10B are due on the following dates:

June 30, 1983—U.S. Reporter required to file less than 20 Forms BE-10B
July 31, 1983—U.S. Reporter required ato file 20 to 99 Forms BE-10B
August 31, 1983—U.S. Reporter required to file 100 or more Forms BE-10B

(g) Inquiries concerning the BE-10 Survey should be directed to: Bureau of Economic Analysis (BE-50, SSB), U.S. Department of Commerce, Washington, DC 20230, or phone (202) 523-0632 during office hours—7:30 a.m. to 4:00 p.m. Washington, D.C. time.

(5 U.S.C. 301, 22 U.S.C. 3101-3108, and Executive Order 11961)

[48 FR 8994, Mar. 3, 1983]

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1980.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1980. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13, and § 806.15 (a) through (g) are applicable to this Survey. Specific additional rules and regulations for the BE-12 Survey are given below.

(a) *Basic requirement.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year. A business enterprise's 1980 fiscal year is the business enterprise's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investment in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated or sold during the reporting period.

(b) *Exemption.* A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE-12 report if:

(1) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:

(i) Total assets,

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes, and

(2) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12 because it falls below the exemption levels, then it must complete and file a "Claim for Not Filing a Form BE-12" with item 5 of the Claim marked and the information requested in item 5 provided. (The Claim is on the last page of the standard Form BE-12 and should be detached for filing.)

(c) *Banks.* A specialized report form (Form BE-12 BANK) has been adopted for U.S. affiliates that are banks (including bank holding companies), that is, for U.S. business enterprises over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where use of Form BE-12 BANK is not clear-cut, permission to use it must be secured from BEA in advance of filing. Nonbank U.S. affiliates owned by a U.S. affiliate that is a bank or a bank holding company may not be consolidated on Form BE-12 BANK, but must be reported separately on a standard Form BE-12. Activities of nonbank U.S. affiliates that provide support to the parent bank company, such as a real estate subsidiary set up to hold the office building occupied by the parent company, are considered part of the bank activity. Form BE-12 BANK, where its use is permitted, stands in place of Form BE-12, and the instructions given for Form BE-12 BANK should be so construed.

(d) *Due date.* A completed and certified 1980 Form BE-12 must be filed with BEA not later than August 15, 1981.

(e) Inquiries concerning Form BE-12 should be directed to: U.S. Department of Commerce, Bureau of Economic Analysis (BE-50/IN), Washington, DC 20230. Telephone (202) 523-0547 or (202) 523-0632.

[46 FR 30336, June 8, 1981]

§ 806.18 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507 (f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
806.1 through 806.17	0608-0020
	0024
	0032
	0004
	0035
	0030
	0009
	0023
	0034

[48 FR 56944, Dec. 27, 1983]

PART 807—PUBLIC INFORMATION

Sec.
807.1 Public Reference Facility.
807.2 Department of Commerce rules applicable.

§ 807.1 Public Reference Facility.

The Public Reference Facility of the Bureau of Economic Analysis is located in Room B7 of the Tower Building. 1401 K Street NW., Washington, DC 20230. The telephone number is 202-523-0595. The facility is open to the public from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

(5 U.S.C. 552 as amended by Pub. L. 93-502; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and 15 CFR Part 4 of Subtitle A)

[42 FR 38574, July 29, 1977]

§ 807.2 Department of Commerce rules applicable.

The rules applicable to the services provided in the facility and procedures to be followed for public inspection and copying of materials are found in Part 4 of Subtitle A of Title 15 CFR.

(5 U.S.C. 552 as amended by Pub. L. 93-502; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and 15 CFR Part 4 of Subtitle A)

[42 FR 38574, July 29, 1977]

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER A—GENERAL REGULATIONS

Part		*Page*
902	NOAA information collection requirements under the Paperwork Reduction Act: OMB control numbers	57
903	Public information	57
904	Civil procedures	65
906	International affairs	91
907	Environmental information	92
908	Maintaining records and submitting reports on weather modification activities	93
909	Policies and procedures regarding disclosure of information and NOAA employee testimony in litigation not involving the United States	99
911	The United States Geostationary Operational Environmental Satellite (GOES) Data Collection System (DCS)	101
916	Uniform relocation assistance and real property acquisition policies	104
917	National sea grant program funding regulations	131
918	Sea grants	137
921	National Estuarine Sanctuary Program Regulations	142
922	National Marine sanctuary program	160
923	Coastal zone management program development and approval regulations	169
924	Monitor marine sanctuary	215
926	Coastal zone management program development grants, allocation of funds to States	217
927	Allocation of section 306 program administration grants	221
928	Review of performance	221
929	Key Largo National Marine Sanctuary final regulations	226

Part *Page*

930 Federal consistency with approved coastal management programs 231

931 Coastal Energy Impact Program 257

932 Coastal zone management interstate grants 289

933 Coastal zone management research and technical assistance 296

935 The Channel Islands National Marine Sanctuary regulations 302

936 The Point Reyes/Farallon Islands Marine Sanctuary regulations 307

937 The Looe Key National Marine Sanctuary regulations 311

938 The Gray's Reef National Marine Sanctuary regulations 315

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—GENERAL REGULATIONS OF THE NATIONAL WEATHER SERVICE

945 Rules for guidance of the public 319

SUBCHAPTER D—GENERAL REGULATIONS OF THE ENVIRONMENTAL DATA SERVICE

950 Environmental data and information 321

970 Deep seabed mining regulations for exploration licenses 324

981 Ocean Thermal Energy Conversion Licensing Program 371

SUBCHAPTER A—GENERAL REGULATIONS

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

§902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart collects and displays the control numbers assigned to information collection requirements of the National Oceanic and Atmospheric Administration (NOAA) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. NOAA intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR part or section where identified or described	Current OMB control No.
Part 908	0648-0025
917.11	0648-0008
	0648-0019
	0648-0034
917.22	0648-0008
	0648-0019
	0648-0034
917.30b	0648-0008
	0648-0019
	0648-0034
917.43c	0648-0119
918.7	0648-0147
921 Subpart B	0648-0121
923 Subpart J	0648-0119
924.6	0648-0141
929.7	0648-0141
935.9	0648-0141
936.9	0648-0141
937.8	0648-0141
938.8	0648-0141
970	0648-0145
981	0648-0144

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. Chapter 35; 5 CFR Part 1320))

[48 FR 55840, Dec. 16, 1983, as amended at 50 FR 11995, Mar. 27, 1985]

PART 903—PUBLIC INFORMATION

Sec.

903.1 Scope and purpose.
903.2 Policies.
903.3 Definitions.
903.4 Publication in the FEDERAL REGISTER.
903.5 Availability of materials for inspection and copying; indexes.
903.6 Arrangements for public inspection and copying of disclosable records.
903.7 Requests for records.
903.8 Initial determinations of availability of records.
903.9 Appeals from initial denials or untimely delays.
903.10 Fees and charges.
903.11 Officials authorized to make initial denials.

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93-502; 5 U.S.C. 553; Reorg. No. 2 of 1965, 15 U.S.C. 311 nt; 32 FR 9734, 31 FR 10752.

SOURCE: 40 FR 41999, Sept. 10, 1975, unless otherwise noted.

§903.1 Scope and purpose.

(a) This part revises the rules whereby the materials specified in 5 U.S.C. 552(a)(2), and the records of all organizational elements within the National Oceanic and Atmospheric Administration (NOAA) requested under 5 U.S.C. 552(a)(3) are to be made publicly available. This revision is to conform the rules to the requirements of the Freedom of Information Act (5 U.S.C. 552), as amended by Pub. L. 93-502.88, Stat. 1561, effective February 19, 1975.

(b) The organization elements within NOAA are:

(1) The Office of the Administrator;

(2) The National Ocean Service;

(3) The National Weather Service;

(4) The National Marine Fisheries Service;

(5) The National Environmental Satellite, Data, and Information Service;

(6) The Office of Oceanic and Atmospheric Research;

(7) The Office of General Counsel;

(8) The Office of Congressional Affairs;

(9) The Office of Public Affairs;

(10) The Office for Civil Rights;

(11) The Office of NOAA Corps;

(12) The Office of Policy and Planning;

(13) The Office of Budget and Finance;

(14) The Office of Administrative and Technical Services.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20688, May 9, 1983; 48 FR 24039, May 31, 1983]

§ 903.2 Policies.

(a) Department of Commerce Administrative Order 205-12 attached as Appendix A to Part 4 of this title, contains the basic policies and other criteria to be considered in issuing and administering these rules. To the extent that these policies and criteria are not specified in this part or in any supplemental rules of units, they are incorporated by reference.

(b) Requests for records made under 5 U.S.C. 552(a)(3) apply only to existing records, and NOAA is not required, in response to a request, to create records by combining or compiling information contained in existing records, or otherwise to prepare new records. However, agency officials may, upon request, provide or create new information in record form pursuant to user charge statutes, such as 15 U.S.C. 1525 through 1527, or in accord with authority otherwise provided by law.

§ 903.3 Definitions.

(a) To the extent that terms used in this part are defined in 5 U.S.C. 551, they shall have the same definition herein.

(b) As used in this part "Act" means the "Freedom of Information Act" as amended, 5 U.S.C. 552.

(c) The organizational elements identified in § 903.1 are defined in Department Organization Order 25-5B (39 FR 17786, as amended).

§ 903.4 Publication in the Federal Register.

(a) Those materials which are required to be published in the FEDERAL REGISTER pursuant to the provisions of 5 U.S.C. 552(a)(1) have been and will continue to be published in the FEDERAL REGISTER in the form of or included in:

(1) Department Orders of the Department of Commerce, including any supplements and appendices thereto, Secretary of Commerce Circulars, and Department Administrative Orders.

(2) NOAA rules and regulations set forth in Chapter IX of Title 15 CFR and Title 50 CFR.

(3) Notices or otherwise in the FEDERAL REGISTER.

(4) Other publications, when incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the FEDERAL REGISTER.

(b) Those materials which are published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) will, to the extent practicable and to further assist the public, be made available for inspection and copying at the facility identified in § 903.5(c).

§ 903.5 Availability of materials for inspection and copying; indexes.

(a) The Administrator has established and maintains a NOAA Public Reference Facility for the public inspection and copying of:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by NOAA and not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) A current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required to be made available or published by 5 U.S.C. 552(a)(2).

(5) Records of the final votes of each member in every proceeding of NOAA comprised of more than one member, if such final vote shall constitute the final decision of NOAA.

(6) Rules and decisions denying requests for records which otherwise implement or relate to the Act; and

(7) Materials published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) and such additional materials as the NOAA Public Reference Facility may consider desirable and prac-

ticable to make available for the convenience of the public.

(b) NOAA may, to prevent a clearly unwarranted invasion of personal privacy, delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual or instruction, and will in each such case, explain in writing the justification for the deletion.

(c) The above materials may be inspected in the NOAA Public Reference Facility, Room 400, Building 5, 6010 Executive Boulevard, Rockville, MD. Mail to this facility should be addressed as follows: Administrative Documentation Officer (AT/IMS4), National Oceanic and Atmospheric Administration, Rockville, MD 20852. The telephone number for the facility is (301) 443-8192. The facility is open to the public Monday through Friday of each week, except on official Federal holidays, between the hours of 9:00 a.m. and 4:30 p.m. There are no fees or formal requirements for such inspections. Photo copies of these materials can be provided on demand at the prices established in § 903.10.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20689, May 9, 1983]

§ 903.6 Arrangements for public inspection and copying of disclosable records.

(a) During inspection of the record at the NOAA Public Reference Facility, the requester may copy by hand or have copied any portion of the record, and may obtain certification of a machine-copied record, subject to the fees established in § 903.10.

(b) No changes or alterations of any type may be made to the record being inspected, nor may any matter be added to or subtracted therefrom. Papers bound or otherwise assembled in a record file may not be disassembled by requester during inspection. Staff of the facility shall provide assistance if disassembly of a record is necessary for copying purposes, and is authorized to supervise public inspection as necessary to protect the records. Title 18, United States Code, section 2701(a), makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in any public office, or to attempt to do any of the foregoing.

(c) If a requester does not want to inspect a record by personal visit to the NOAA Public Reference Facility, he may request that a copy thereof be mailed to him, upon payment of the copying and postage fees set forth in § 903.10.

(d) Copies of transcripts of public hearings will be made available for inspection when not in use.

§ 903.7 Requests for records.

(a) Requests for information customarily made available by one of the organizational elements listed in § 903.1 should be directed to the appropriate office responsible for providing such information to the public. Such information offices are listed in one or more of the following:

(1) Various guides and handbooks issued by the Department of Commerce and its operating units, (2) the U.S. Government Manual, and (3) the Department of Commerce Telephone Directory. The latter two publications are for sale by the Superintendent of Documents, Washington, DC 20402. Such information is not subject to the fee schedule set forth in § 903.10 of this part and may be subject to fees established under particular statutory authorities (e.g., 15 U.S.C. 1525 through 1527).

(b) If the appropriate information office is not known, the public should direct its inquiries to the NOAA Public Reference Facility identified in § 903.5(c) or the Office of Public Affairs, National Oceanic and Atmospheric Administration, Washington, DC 20230. This facility will route the request, if it appears to be for information regularly available, to the appropriate information office; if the request is for other types of information, the facility will treat the request in accordance with paragraphs (c) through (e) of this section.

(c) A request for a record (or information contained therein) which is not customarily made available to the public as part of the agency's regular information services, or which is not available in the NOAA Public Reference Facility, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information

Request," or "Request for Records," or the equivalent, to distinguish it from other mail. Each such request so marked shall be addressed to a NOAA official identified in § 903.11 who the requester knows or has reason to believe is responsible for the records requested. If the requester is not sure which is the responsible organizational element, the request shall be addressed to the NOAA Public Reference Facility at the address specified in § 903.5(c).

(d) Any request for records deemed to be a Freedom of Information Request and which is not marked and addressed as specified in paragraph (c) of this section will be so marked and addressed by Agency personnel and forwarded immediately to the responsible organizational element. A request which is improperly addressed by the requester will not be deemed to have been "received," for purposes of the time period for processing a request for records set forth in 5 U.S.C. 552(a)(6), until the earlier of either:

(1) The time that forwarding of the request to the responsible organizational element has been effected, or (2) the time such forwarding would have been effected had due diligence been exercised by Agency personnel. In each instance when a request is so forwarded, the receiving element shall notify the requester that the request was improperly addressed and of the date the request was received.

(e) A request for records shall sufficiently identify the records requested to enable Agency personnel familiar with the subject matter to locate them with a reasonable amount of effort. The requester shall, to the extent possible, furnish specific descriptive information regarding dates and places the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. If the request relates to a matter in pending litigation, the court location and case shall be identified. When more than one record is requested, the request shall clearly describe each specific record, and the specific information requested which is contained in a record, so that its availability may be separately determined. Employees at the facility will assist the public to a reasonable extent in framing a request.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20689, May 9, 1983]

§ 903.8 Initial determinations of availability of records.

(a) Upon receipt of a request for any record, the responsible element or the NOAA Public Reference Facility shall promptly log the receipt of the request, and within ten days of its receipt (excepting Saturdays, Sundays, and legal public holidays) shall initially determine:

(1) Whether the request is for records under the Act, is for materials available otherwise than under the Act, or is for information not contained in existing records and, therefore, not under the Act. The responsible organizational element shall promptly notify the requester in writing how the request is being handled when it does not come within the Act.

(2) Whether the records requested are reasonably described and can be located on the basis of the information supplied by the requester. If any of the records requested cannot be identified and located from the information furnished, the responsible organizational element shall promptly so inform the requester in writing, specifying what additional identification is needed to assist in locating the record, and offering to assist the requester to reformulate the request. A categorical request, i.e., one for all records falling within a reasonably specific but broad category, shall be regarded as conforming to the statutory requirement that records be reasonably described, if the particular records can be identified, searched for, collected and produced without unduly burdening or disrupting the Agency's operations.

(3) Whether the records no longer exist, or are not in the Agency's possession. In each instance, the requester shall be promptly notified in writing.

(b) An authorized official shall review the request to determine the availability of the records requested.

(1) The determination shall be made within ten days (excluding Saturdays,

Sundays and legal public holidays) of the receipt of the request (as defined in § 903.7(d)), unless the time is extended as provided in paragraph (b)(2) of this section.

(2) In unusual circumstances, an official authorized to make initial denials of requests may extend the time for initial determination for up to ten days (excluding Saturdays, Sundays and legal public holidays) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Extensions of time for the initial determination and extension of time on appeal may not exceed a total of ten days, and time taken for the former counts against available appeal extension time. "Unusual circumstances" means, but only to the extent reasonably necessary to the processing of a particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or (iii) the need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject-matter interest therein.

(3) If it is determined that the records requested are to be made available, and there are no further fees to be paid, the authorized official shall promptly notify the requester as to where and when the requested records or copies may be obtained or otherwise provide them as agreed. If there are fees still to be paid by the requester, the requester shall be notified that upon payment the records will be made available immediately.

(4) Section 903.11 lists the limited number of officials who have been authorized to make initial denials of requests for records, except as may be subsequently authorized. A reply initially denying, in whole or in part, a request for records shall be in writing, signed by an authorized official, and it shall include:

(i) A reference to the specific exemption or exemptions of the Act authorizing the withholding of the records, stating briefly why the exemption applies and, where relevant, why a discretionary release is not appropriate.

(ii) The name and title or position of each official responsible for the denial authorized by § 903.11.

(iii) A statement of the manner in which any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions which are determined to be exempt.

(iv) A brief statement of the right of the requester to appeal the determination, and the address to which the appeal should be sent, in accord with § 903.9(a) and (b).

(5)(i) When no determination can be made within the initial ten day period or within any extension thereof authorized by 5 U.S.C. 552(a)(6)(B), despite the exercise of due diligence by the agency, an official authorized under § 903.11 to make initial denials shall, within such time period so notify the requester in writing and including:

(A) A statement of the reasons for the delay;

(B) The date a determination is expected;

(C) That such official was responsible for determining that due diligence was exercised and that no determination was possible;

(D) A statement that requester has a right either to treat the delay as an initial denial or to appeal in accordance with § 903.9(a) and (b), in which case the address to which the appeal should be sent must be provided. The requester may be asked to forego an appeal until a determination is made. The Agency shall nevertheless continue to exercise due diligence in processing the request.

(ii) In each of the situations set forth in this section, the procedures relating to fees described in § 903.10 shall apply and be coordinated as appropriate.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20689, May 9, 1983]

§ 903.9 Appeals from initial denials or untimely delays.

(a) When a request for records has been initially denied in whole or in part, or otherwise has not been timely determined, the requester may submit a written appeal within thirty calendar days after the date of the written denial or on the last day of the applicable time limit in a no determination situation. The appeal shall include a copy of the original request, the initial denial, if any, and a statement as to the reasons why the records requested should be made available and why the initial denial, if that be the case, might be in error. No personal appearance, oral argument, or hearing on an appeal is provided.

(b) An appeal should be addressed to the General Counsel, U.S. Department of Commerce (DOC), Washington, DC 20230. Both the appeal envelope and the letter shall be marked clearly "Freedom of Information Appeal," or "Appeal for Records," or the equivalent. An appeal not addressed and marked as provided herein, upon recognition to be such by agency personnel, will be so marked and forwarded immediately to the General Counsel/DOC. An appeal incorrectly addressed will not be deemed to have been "received" for purposes of the time period for appeal set forth in 5 U.S.C. 522(a)(6), until the earlier of either:

(1) The time that forwarding to the General Counsel/DOC has been effected, or (2) the time such forwarding would have been effected had due diligence been exercised by agency personnel. In each instance when an appeal is so forwarded, the General Counsel/DOC shall notify the requester that the appeal was improperly addressed and of the date the appeal actually was received, or normally should have been received, in the Office of the General Counsel/DOC.

(c) An appeal shall be determined within twenty days (excluding Saturdays, Sundays, and legal public holidays) of its receipt, unless an extension of time is made in unusual circumstances, when the time for action may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 903.8(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or in whole, such records shall be promptly made available for inspection and copying as provided in § 903.6.

(e) If no determination of an appeal has been sent to the requester within the twenty day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(e)(4). When no determination can be sent to the requester within the applicable time limit, the Administrator shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the notice to the requester shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and when relevant, a statement as to why a discretionary release is not appropriate; (2) a statement that the decision is final; (3) advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia, and (4) the names and titles or positions of each official responsible for the denial of the request.

(g) Final appeal decisions are indexed and available for public inspection and copying in the Central Reference and Records Inspection Facility, Department of Commerce, Room 6628, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377-4217.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20689, May 9, 1983]

§ 903.10 Fees and charges.

(a) *Fee schedule.* Unless waived or reduced as provided in paragraph (b) of this section, the following fees shall be charged in connection with requests for records subject to this part.

(1) *Searches other than for computerized records.* $2.50 for each one-quarter hour (or fraction thereof) per person for time spent in trying to find the records requested. This includes the time spent by clerical, professional and supervisory personnel in examining records in order to find records which are within the scope of the request, and transportation of personnel and records necessary to the search.

(2) *Searches for computerized records.* Actual direct cost of the computer time to NOAA to use the equipment involved in the search, not to exceed $270 per hour ($4.50 per minute). This fee includes both machine time, and that of related operator and clerical personnel. If programming is necessary to conduct the search, there will be an additional fee of $2.50 for each one-quarter hour (or fraction thereof) per person for programmer/analyst time. Computer printouts shall be 20 cents per page for the original and carbon copies concurrently printed.

(3) *Copying of records.* 7 cents per copy of each page up to 8½" × 14", made by photocopy or similar process. Normally, only one copy will be provided. Added copies will be provided only upon a showing of demonstrated need.

(4) *Copies of microfilm or microfiche.*

16 mm (100 ft. roll)—$6.
35 mm (100 ft. roll)—$7.
105 mm fiche—$0.25 each.
Aperture cards—$0.25 each.
$0.25 per page for each microform frame printed on paper.

(5) *Certification or authentication of records.* $3 per certification or authentication.

(6) *Forwarding records to requesting party.* Actual cost of postage, insurance and special fees, if their total exceeds $1.

(7) *Other costs.* When other duplication costs not specifically identified in this paragraph (a) of this section are requested and provided, their direct cost to NOAA shall be charged. Other services and materials requested which are not covered by this part are chargeable at actual cost to NOAA.

(b) *Waiver or reduction of fees.* A fee shall be waived or alternatively reduced for a request for records under this part where:

(1) A search fee totals $10 or less. A copying fee totals $1 or less. In determining total fees, the fees for other contemporaneous requests made by the same or related requesters shall be aggregated.

(2) Records requested by a Federal agency, Federal court (excluding parties), Congressional committee or subcommittee, the General Accounting Office, or the Library of Congress are not made under the Act, and fees payable under this part do not apply.

(3) The records are requested by a State or local government, or intergovernmental agency, a foreign government, public international organization, or any agency thereof, for purposes that are determined to be an appropriate courtesy or in the public interest and will promote the objectives of the Act and the agency.

(4) It is determined either upon petition submitted by the requester, or by a responsible official on his own initiative, that waiver or reduction of the fee is in the public interest because furnishing the information in the records requested can be considered as primarily benefiting the general public. Any such petition shall specify the intended purpose to which the records requested will be put and why all of them are necessary, and any other relevant factors in order to show how the information furnished in all or part of the records will primarily benefit the general public.

(5) It is determined by NOAA, based upon a petition therefor, that the requester is indigent, that the request for records has a strong public interest justification, and that agency resources permit a waiver of the fee.

(c) *Payment of fees.* The following conditions for payment of fees charged under this section shall apply.

(1) A search fee provided in paragraph (a) of this section which exceeds $50 is chargeable even when no record responsive to the request for records is found, or when the records requested are determined to be totally exempt from disclosure.

(2) If the requester has stated in or with his request that he is willing to pay an amount sufficient to cover the necessary search fee, a search may be made for the records without further notice to the requester, unless the requester is delinquent in making past payments, or the estimated search fee will exceed $100.

(3) If the requester has stated in or with his request that he is willing to pay estimated fees up to a specified limit not exceeding $100, a search may be made for the records without further notice if the estimated fees are less than the specified limit unless the requesting party is delinquent in making past payments.

(4) If the estimated fee (i) exceeds $100 for a request covered within paragraph (c)(2) of this section, (ii) exceeds the specified limits covered within paragraph (c)(3) of this section, or (iii) exceeds $50 and the requester has said nothing about payment or the requester is delinquent in past payments, the requester shall be notified immediately (by telephone if possible, with written confirmation) of the estimated total fee and shall be asked to pay such fee before the search may be conducted or continued. The notice may advise the requester to confer with NOAA personnel so as to attempt to reformulate the request for records to reduce the fee.

(5) The administrative time deadlines prescribed in 5 U.S.C. 522(a)(6) shall be tolled from the time the notice described in paragraph (c)(4) of this section is sent to the requester until the time that payment of the estimated fee is received from the requester, unless the responsible official determines to postpone payment of the search fee until the search has proceeded further or has been completed.

(6) Where a specific fee is determined to be payable and notice thereof has been sent to the requester, the payment of such fee shall be received before the records requested, or any part thereof, are made available to the requester.

(7) Payments of fees shall be made preferably by check or money order payable to the U.S. Department of Commerce and, they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(8) If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester. If the estimated fee is less than the actual fee later determined, any difference in excess of $1 may be further billed to and is payable by the requester.

[40 FR 41999, Sept. 10, 1975, as amended at 48 FR 20689, May 9, 1983]

§ 903.11 Officials authorized to make initial denials.

The following officials of the National Oceanic and Atmospheric Administration (NOAA) have been delegated authority initially to deny requests for records of their respective organizational elements. (The listings are subject to changes because of reorganizational revisions or new delegations.)

Administrator, National Oceanic and Atmospheric Administration, Washington, DC 20230.

Deputy Administrator, National Oceanic and Atmospheric Administration, Washington, DC 20230.

Associate Administrator, National Oceanic and Atmospheric Administration, Washington DC 20230.

Director, Office of Public Affairs, National Oceanic and Atmospheric Administration, Washington, DC 20230.

Director, NOAA Corps, National Oceanic and Atmospheric Administration, Rockville, MD 20852.

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Washington, DC 20230.

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, DC 20235.

Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910.

Assistant Administrator for Environmental Satellite, Data, and Information Services, National Oceanic and Atmospheric Administration, Washington, DC 20233.

Assistant Administrator for Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Rockville, MD 20852.

Director, Environmental Research Laboratories, National Oceanic and Atmospheric Administration, Boulder, CO 80303.

Director, Office of Administrative and Technical Services, National Oceanic and Atmospheric Administration, Washington, DC 20230.

[48 FR 20689, May 9, 1983]

PART 904—CIVIL PROCEDURES

Subpart A—[Reserved]

Subpart B—Civil Penalties

Sec.
904.100 General.
904.101 Notice of Violation and Assessment (NOVA).
904.102 Procedures upon receipt of NOVA.
904.103 Hearing and administrative review.
904.104 Final administrative decision.
904.105 Payment of final assessment.
904.106 Compromise of civil penalty.
904.107 Application of this subpart to permit holders and vessel owners.
904.108 Ability to pay.

Subpart C—Hearing and Appeal Procedures

GENERAL

904.200 Scope and applicability.
904.201 Definitions.
904.202 Use of gender and number.
904.203 Docket number.
904.204 Notice of assignment.
904.205 Appearances.
904.206 Duties and powers of Judge.
904.207 Disqualification of Judge.
904.208—904.219 [Reserved]

PREHEARING

904.220 Pleadings, motions, and service.
904.221 Amendment of pleadings or record.
904.222 Time computation and extensions.
904.223 Expedition of proceedings.
904.224 Summary decision.
904.225 Failure to appear.
904.226 Dismissal for failure to prosecute or defend.
904.227 Settlements.
904.228 Stipulation.
Sec.
904.229 Consolidation.
904.230 Prehearing conferences.
904.231—904.239 [Reserved]

DISCOVERY

904.240 Discovery generally.
904.241 Depositions.
904.242 Interrogatories, requests for admission, and production of documents.
904.243 Subpoenas.
904.244—904.249 [Reserved]

HEARINGS

904.250 Notice of time and place.
904.251 Evidence.
904.252 Witnesses.
904.253 Interlocutory appeals.
904.254 Ex parte communications.
904.255—904.259 [Reserved]

POST-HEARING

904.260 Official transcript.
904.261 Petition for reconsideration.
904.262 Proposed findings and conclusions.
904.263 Documents, copies and exhibits.
904.264—904.269 [Reserved]

DECISION

904.270 Record of decision.
904.271 Decision.
904.272 Administrative review of decision.
904.273—904.299 [Reserved]

Subpart D—Permit Sanctions and Denials

GENERAL

904.300 Scope and applicability.
904.301 Definitions.
904.302 Bases for sanctions or denials.
904.303 Notice of permit sanction.
904.304 Notice of intent to deny permit.
904.305 Opportunity for hearing.
904.306 Hearing and decision.
904.307—904.309 [Reserved]

SANCTIONS FOR NONPAYMENT OF PENALTIES

904.310 Nature of sanctions.
904.311 Compliance.
904.312—904.319 [Reserved]

SANCTIONS FOR VIOLATIONS

904.320 Nature of sanctions.
904.321 Reinstatement of permit.
904.322 Interim action.
904.323—904.399 [Reserved]

Subpart E—Written Warnings

904.400 Purpose and scope.
904.405 Definition.
904.410 Written warning as a prior offense.
904.415 Procedures.

Sec.
904.420 Review and appeal of a written warning.

Subpart F—Seizure and Forfeiture Procedures

904.500 Purpose and scope.
904.501 Notice of seizure.
904.502 Bonded release.
904.503 Appraisement.
904.504 Administrative forfeiture proceedings.
904.505 Summary sale.
904.506 Remission and mitigation of forfeiture.
904.507 Petition for restoration of proceeds.
904.508 Recovery of certain storage costs.

Subpart A—[Reserved]

Subpart B—Civil Penalties

AUTHORITY: Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Lacey Act, 16 U.S.C. 3371-3378; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, et seq.; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, et seq.; Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434; Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Northern Pacific Halibut Act, 16 U.S.C. 773-773j; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021, et seq.

SOURCE: 46 FR 61644, Dec. 18, 1981, unless otherwise noted.

§ 904.100 General.

(a) *Purpose and scope.* (1) The following statutes administered by NOAA authorize the Administrator to assess a civil penalty for each violation against any person found to have committed an act prohibited by the statute or an implementing regulation (each day of a continuing violation is a separate offense):

(i) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882;

(ii) Endangered Species Act of 1973, 16 U.S.C. 1531 through 1543;

(iii) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 through 1407;

(iv) Lacey Act, 16 U.S.C. 3371 through 3378;

(v) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, et seq.;

(vi) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, *et seq.;*

(vii) Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 through 1434;

(viii) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 through 971g;

(ix) Northern Pacific Halibut Act, 16 U.S.C. 773 through 773j;

(x) Tuna Conventions Act of 1950, 16 U.S.C. 951 through 961;

(xi) North Pacific Fisheries Act, 16 U.S.C. 1021 et seq.

(2) This subpart provides uniform rules and procedures for assessing civil penalties under the statutes listed in paragraph (a)(1) of this section.

(b) *Filing and service of documents.* (1) Whenever this subpart requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served. Refusal by the person to be served, or his or her agency or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(2) Whenever this subpart or an order issued hereunder requires a document or other paper to be filed within a certain period of time, such document will be considered filed as of the date of the postmark (or as otherwise shown for government-franked mail), if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods begin to run on the day following the date of the document, paper, or event which begins the time period and, unless otherwise provided by law or these regulations, includes the last day of the period, unless such day is a Saturday, Sunday, or Federal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or Federal holiday. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this subpart to take place within a specified period of time.

(3) If an oral or written application is made to the Administrator within 10 days after the expiration of a time

period established in this subpart for the required filing of documents or other papers, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this part, or by order of an Administrative Law Judge under this part, no requests for an extension of time may be granted.

(c) *Definitions.* Unless the context otherwise requires, terms in this subpart have the meanings prescribed in the applicable statute or in Subpart A. In addition, the following definitions apply:

(1) *Administrator.* Means the Administrator of NOAA or a designee.

(2) *Affected permit.* Means a permit or license issued by NOAA under an applicable statute that may be subject to sanctions as a result of civil penalty proceedings under this part.

(3) *Affected vessel.* Means any vessel that is liable *in rem* for any civil penalty proceedings under this part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this part.

(4) *Applicable statute.* Means a statute listed in § 904.100(a), and its implementing regulations, under which a civil penalty is assessed, or proposed to be assessed.

(5) *Final administrative decision.* Means an order of the Administrator assessing a civil penalty which is not subject to further agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate federal district court as authorized by law.

(6) *Permit.* Means any license, permit, certificate or other approval issued by NOAA under an applicable statute.

(d) *Exceptions.* Whenever a particular statute under which a penalty is assessed requires procedures different from the procedures in this subpart, the alternative procedures for that statute are set forth in the last paragraph of the section of this subpart which is affected.

[46 FR 61644, Dec. 18, 1981; 47 FR 19990, May 10, 1982; 47 FR 54429, Dec. 3, 1982]

§ 904.101 A Notice of Violation and Assessment (NOVA).

(a) A notice of violation and assessment (NOVA) will be issued by the Administrator and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the holder of an affected permit, or the owner of an affected vessel, if the holder or owner is not the respondent. Although no specific form is prescribed, the NOVA will contain: (1) A concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated; (3) the findings and conclusions upon which the Administrator bases the proposed assessment; and (4) the amount of the civil penalty proposed to be assessed.

(b) In respect to the amount of civil penalty, the Administrator will take into account information available to the agency concerning any factor to be considered under the applicable statute, and any other matter that justice or the purposes of the statute require.

(c) The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the facts believed to show a violation. The NOVA will advise of the respondent's rights at that point in the proceeding, and will be accompanied by a copy of the regulations in this part governing civil procedures.

§ 904.102 Procedures upon receipt of NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended or modified under paragraph (b) of this section;

(3) Request a hearing under paragraph (e) of this section;

(4) Request an extension of time to respond to the NOVA under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. Options (2), (3), (4), and (5) may also be exercised by the holder of an affected permit or the owner of an affected vessel.

(b) The respondent, the permit holder, or the vessel owner may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the NOVA. If amendment or modification is sought, the Administrator will either amend the NOVA or decline to amend it, and so notify the respondent, permit holder or vessel owner, as appropriate.

(c) The respondent, permit holder, or vessel owner may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. The Administrator may grant an extension of up to 30 days unless the Administrator determines that the requestor could, exercising reasonable diligence, respond within the 30-day period. If the Administrator does not respond to the request within 48 hours of its receipt by the Administrator, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48 hour period is considered effective response, and will be followed by written confirmation.

(d) The Administrator may, for good cause, grant an additional extension beyond the thirty day period specified in paragraph (c) of this section.

(e) If the respondent, the permit holder, or the vessel owner wishes a hearing, the request shall be dated and in writing, and shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA. The request shall either attach a copy of the relevant NOVA or refer to the relevant NOAA case number.

(f) Any denial, in whole or in part, of any request under this section which is based upon untimeliness will be in writing.

(g) The Administrator may, in the Administrator's discretion, treat any communication from a respondent, a permit holder, or vessel owner as a request for a hearing under paragraph (e) of this section.

§ 904.103 Hearing and administrative review.

(a) Any hearing request under § 904.102(e) is governed by the hearing and review procedures in Subpart C.

(b) In any hearing held in response to a request under § 904.102(e), the Administrative Law Judge will render an initial decision. Any party to the hearing may seek the Administrator's review of the Judge's initial decision, subject to the provisions of Subpart C.

§ 904.104 Final administrative decision.

(a) If no request for hearing is filed as provided in § 904.102(e), the NOVA becomes effective as the final administrative decision and order of the Administrator on the 30th day after service of the NOVA, or on the last day of any delay period granted.

(b) If a request for hearing is filed in accordance with § 904.102(e), the date of the final administrative decision is as provided in Subpart C.

§ 904.105 Payment of final assessment.

(a) Respondent shall make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of the Administrator under § 904.104 or Subpart C, or, if the respondent initiates judicial review of the assessment in accordance with the applicable statute during the 30 day period, within 10 days after the appropriate court enters final judgment in favor of the Administrator, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(b) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States, or may act under § 904.106.

§ 904.106 Compromise of civil penalty.

(a) The Administrator, in the Administrator's sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (e) of this section.

(b) The compromise authority of the Administrator under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of the Administrator or in response to a request of the alleged violator or other interested person.

(c) If the Administrator acts under this section prior to issuing a NOVA or after a final assessment is payable under § 904.105, the Administrator will prepare a document indicating the action taken and citing this paragraph and the applicable statutory provision as authority. Once the case has been assigned for hearing under Subpart C, the Administrator will, except in unusual circumstances, defer any compromise action under this section until the Administrative Law Judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this section nor the Administrator's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) If compromise action is requested or otherwise becomes appropriate for the Administrator's consideration during the pendency of a petition for relief from forfeiture filed under Subpart F, the Administrator may consolidate, in a manner consistent with the provisions of any statute or regulation applicable to the forfeiture, consideration of the two matters.

(e) *Exception:* The Administrator will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

§ 904.107 Application of this subpart to permit holders and vessel owners.

(a) This subpart applies to holders of the affected permits as defined in § 904.100(c)(2).

(b) This subpart also applies to owners of affected vessels as defined in § 904.100(c)(3).

§ 904.108 Ability to pay.

(a) *Scope.* (1) The Administrator shall take into account a respondent's ability to pay when assessing a civil penalty for a violation of one of the statutes NOAA administers, including those listed in § 904.100(a)(1).

(2) For penalties that have become final agency actions in accordance with § 904.104, the Administrator may, in his or her discretion, also consider ability to pay in ruling on a petition for remission or mitigation or in collecting an unpaid civil penalty (but see § 904.108(h)(1)).

(b) *Relation to other factors.* The ability of a person to pay a penalty is only one of a number of factors to be taken into account in assessing a penalty. Other factors, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; with respect to the respondent, the degree of culpability and any history of prior offenses; and such other matters as justice may require. The Administrator must balance a respondent's ability to pay with the other relevant factors when determining the appropriate amount of a penalty.

(c) *Use of ability to pay factor.* The Administrator may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors listed in paragraph (b) of this section. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(d) *Respondent's burden to prove inability.* If a respondent asserts that a penalty should be reduced because of inability to pay, the respondent has the burden of proving such inability by providing a complete and accurate financial statement to the Administrator. An evaluation of a respondent's financial situation will not be undertaken until the respondent, if requested, completes a financial information request form, answers written interrogatories, and submits verification of his or her financial information from an independent source. If a respondent does not submit the requested financial information, the respondent will be presumed to have the ability to pay the penalty.

(e) *Relevant financial information.* Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of a respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. The Administrator's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(f) *When information must be submitted.* Financial information regarding respondent's ability to pay should be submitted to the Office of General Counsel as soon after receipt of the Notice of Violation and Assessment (NOVA) as possible. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her ability to pay considered in the initial decision of the Administrative Law Judge (ALJ), the financial information to be presented to the ALJ must be submitted to the Office of General Counsel at least 10 days in advance of the hearing.

(g) *Administrative review.* Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the ALJ at the hearing.

(h) *Remission or mitigation.* (1) A petition for remission or mitigation which is based, wholly or in part, on a respondent's ability to pay a penalty must be submitted within 30 days of a final administrative decision and order of the Administrator as defined in § 904.104 and § 904.272.

(2) If a penalty assessed in the NOVA is substantially increased by the ALJ in an initial decision and the respondent did not submit ability to pay information relative to the greater amount assessed by the ALJ, the Administrator will consider ability to pay in a petition for remission or mitigation, notwithstanding the discretion reserved to the Administrator in paragraph (a)(2) of this section.

[49 FR 1465, Jan. 11, 1984]

Subpart C—Hearing and Appeal Procedures

AUTHORITY: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971, 89 Stat. 385; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401, 94 Stat. 553; Endangered Species Act of 1973, 16 U.S.C. 1531, 87 Stat. 884; Lacey Act, 16 U.S.C. 3371-3378, 62 Stat. 686; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801, 90 Stat. 331; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361, 86 Stat. 1027; Marine Protection, Research, and Sanctuaries Act of 1972, Title III, 16 U.S.C. 1431, 86 Stat. 1061; Northern Pacific Halibut Act, 16 U.S.C. 773, 50 Stat. 325; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101, 94 Stat. 974; Tuna Conventions Act of 1950, 16 U.S.C. 951, 64 Stat. 777; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021 et seq.

SOURCE: 46 FR 61646, Dec. 18, 1981, unless otherwise noted.

GENERAL

§ 904.200 Scope and applicability.

(a) These rules establish uniform procedures for the conduct of hearings and the issuance of initial, recommended, and final decisions of the National Oceanic and Atmospheric Administration (NOAA) in cases involving alleged violations of the laws listed above and regulations implementing these Acts, including civil penalty assessments and permit sanctions. By separate regulation, these rules may be applied to proceedings which do not involve alleged violations of law. These rules shall govern proceedings for which no other rules of practice have been promulgated. By delegation from the Secretary of Commerce or the statute itself, the Administrator of NOAA has authority to carry out the provisions of the Acts and is authorized further to delegate these authorities. These rules are an exercise of that authority.

(b) Subject to the administrative direction of the Chief Administrative Law Judge, each Administrative Law Judge (Judge) assigned by the Chief Administrative Law Judge is delegated authority to make the initial, recommended, or final decision of the agency (whichever is made appropriate by regulation outside this subpart) in proceedings subject to the provisions of this subpart and to take actions to promote the efficient and fair conduct of hearings as set out in these rules, except that no Administrative Law Judge has authority to rule on challenges to the validity of regulations promulgated by the agency.

(c) The rules in this subpart will not serve as an independent basis for claiming the right to a hearing, but instead prescribe procedures for the conduct of hearings, the right to which is provided by other authority, including other subparts in this part.

§ 904.201 Definitions.

"Administrator" means the Administrator of NOAA or a designee.

"Affected licensee" means the holder of a license or permit issued by the agency which may be subject to sanctions by the agency as a result of proceedings under this subpart.

"Affected vessel" means a vessel whose agency-issued permit may be subject to sanctions by the agency as a result of proceedings under this subpart, or would be liable *in rem* for a civil penalty assessed under this subpart.

"Initial decision" means a decision of the Administrative Law Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final agency decision in the absence of such review.

"Final decision" when used in reference to an Administrative Law Judge decision, means a decision of the Administrative Law Judge which, under applicable statute and regulation, is the final agency decision and is not subject to review by the Administrator.

"Recommended decision" means a decision of the Administrative Law Judge which, under applicable statute and regulation, is a recommendation considered by the Administrator in reaching a final agency decision, but which does not itself become the final agency decision.

"Agency" means NOAA.

"Decision" means an initial, recommended, or final decision of the Administrative Law Judge.

§ 904.202 Use of gender and number.

Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender include the feminine gender and the feminine the masculine.

§ 904.203 Docket number.

Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding shall be referred to by such number.

§ 904.204 Notice of assignment.

Written notice of the assignment of hearing to the Judge will promptly be given to the parties and thereafter all pleadings, papers, and other documents in the proceeding shall be filed directly with the Judge with copies served on the opposing party.

§ 904.205 Appearances.

A party may appear in person or by or with counsel or other qualified representative.

§ 904.206 Duties and powers of Judge.

(a) The Judge shall have all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to:

(1) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation; provided, however, that the respondent, agency counsel, and if they enter an appearance, the owner of an affected vessel and the holder of an affected license, shall be parties, and provided further that the Judge shall prior to ruling ascertain the views of other parties and base the ruling on whether the request is from a person who could be directly and adversely affected by the decision and who may contribute materially to the disposition of the proceedings;

(2) Schedule the time and place and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(3) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness refusing to answer a question ruled to be proper;

(4) Administer oaths and affirmations to witnesses;

(5) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240;

(6) Rule on motions, procedural requests, and similar matters;

(7) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(8) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(9) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon a failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(10) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(11) Take official notice of any matter not appearing in evidence which is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; provided, that the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(12) Prepare and submit a decision or other appropriate disposition document and certify the record;

(13) Award attorney fees and expenses as provided in Subpart D; and

(14) Grant preliminary or interim relief.

§ 904.207 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification shall file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge shall rule on the matter. If the Judge believes himself/herself not disqualified, and so rules, the Judge shall also cause all matters relating to such claims of disqualification affirmatively to appear in the record.

§§ 904.208—904.219 [Reserved]

PREHEARING

§ 904.220 Pleadings, motions, and service.

(a) An original and one copy of all pleadings and documents shall be filed with the Office of Administrative Law Judges and a copy shall be served upon each party of record. All pleadings or documents when submitted for filing shall show that service has been made upon all parties. Such service shall be made by delivering one copy to each party in person or by mailing to the last known address by first-class mail properly addressed with postage prepaid.

(b) All papers to be filed under the Rules in this Subpart may be reproduced by printing or any other process, provided the copies are clear and legible, shall be dated, the original signed in ink, and shall show the docket description and title of the proceeding, and the title, if any, and address of the signatory. If typewritten, the impression shall be on only one side of the paper and shall be double spaced, pica type, if possible, except that quotations shall be single spaced and indented.

(c) Any documents filed shall be signed: (1) By the person or persons filing the same, (2) by an officer thereof if a corporation, (3) by an officer or employee if a government instrumentality, or (4) by an attorney or other person having authority to sign.

(d) The date of service of pleadings or documents shall, unless otherwise specified, be the day when the material is deposited in the United States mail, shown by the postmark thereon (or as otherwise shown for government-franked mailings) or is delivered in person, as the case may be.

(e) Motions shall normally be made in writing and shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(f) Unless otherwise provided, the answer to any written motion, pleading, or petition shall be served within 15 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 15-day period. Answers shall be in writing, unless made in response to an oral motion made at a hearing, shall be so drawn as fully and completely to advise the parties and the Judge concerning the nature of the opposition, shall admit or deny specifically and in detail each material allegation of the pleading answered, and shall state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer shall be deemed controverted.

(g) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 10 days of service of an answer. The Judge, in his/her discretion, may dispense with the reply. No further responses are permitted.

§ 904.221 Amendment of pleadings or record.

The Judge, upon his/her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. In his/her discretion, the Judge may permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected by deletion or substitution of words or figures and broad discretion shall be exercised by the Judge in permitting such corrections.

§ 904.222 Time computation and extensions.

(a) If appropriate and justified, the Judge may grant an extension of time. Requests for extensions of time shall, except in extraordinary circumstances, be made in writing.

(b) Saturdays, Sundays, and Federal holidays will be included in computing the time allowed for service of any document or paper, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next business day.

(c) Time periods will begin on the day following the date of the document, paper, or event which starts the time period.

§ 904.223 Expedition of proceedings.

(a) In the interests of justice and administrative efficiency, the Judge on his/her own initiative may expedite the proceeding.

(b) Additionally, a motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits shall not be scheduled within less than three days notice, unless all parties consent to an earlier hearing.

§ 904.224 Summary decision.

(a) At any time after commencement of a proceeding and before the scheduling of a hearing on the merits, or such later time as permitted by the Judge, a party or the Judge on his/her own motion may move for a summary decision disposing of all or part of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue or issues under consideration: (1) That there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

§ 904.225 Failure to appear.

(a) If a party fails to appear after service of notice proper under these rules, the hearing may proceed. A notation of failure to appear will be made in the record, and the hearing may be conducted with the parties then present, or the matter may be terminated if the Judge determines that proceeding with the hearing will not aid the decisional process.

(b) The Judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(c) Failure of a party to appear after proper notice will be deemed a waiver of any right to a hearing and consent to the making of a decision on the record.

§ 904.226 Dismissal for failure to prosecute or defend.

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including dimissal of the matter from the docket for failure to prosecute or defend. Such dismissal or other order shall be subject to § 904.272.

§ 904.227 Settlements.

If settlement is reached before the Judge has certified the record, the Judge in his/her discretion may require the submission of a copy of the agreement to assure the Judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 904.228 Stipulation.

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the Judge. Written stipulations shall be signed and shall be served upon all parties of record within the time period specified by the Judge.

§ 904.229 Consolidation.

The Judge may order two or more proceedings which involve substantially the same parties or the same issues consolidated and heard together.

§ 904.230 Prehearing conferences.

(a) Prior to any hearing or at other times deemed appropriate, the Judge may, upon his/her own initiative, or upon the application of any party, arrange a telephone conference and where approporiate, record such telephone conference, or direct the parties to appear before him/her for a conference to consider:

(1) Simplication or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his/her discretion may issue an order showing the matters disposed of by Order or Agreement in such conference.

§§ 904.231—904.239 [Reserved]

DISCOVERY

§ 904.240 Discovery generally.

(a) Parties may obtain discovery of any relevant matter, not privileged, that is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. In connection with any deposition or other discovery procedure which the parties cannot voluntarily resolve, the Judge may make any order required to compel proper discovery, to protect a party or person from harassment, undue burden or expense, or to preserve confidentiality where requested or in the Judge's discretion.

(b) Any orders concerning discovery may include limitations on the scope, method, time, and place for same, and upon request, or within the Judge's discretion, an appropriate protective order.

(c) If a party fails to comply with a subpoena or order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories or requests for admissions, the Judge may, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the party, or both.

§ 904.241 Depositions.

(a) Any party desiring to take the deposition of a witness shall serve written notice on the other parties and the witness setting forth the time when, the place where, and the name and mailing address of the person before whom the deposition is to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(b) Depositions may be taken orally before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held or before a person appointed by the Judge.

(c) Notice shall be given not less than five days before the deposition is to be taken if within the United States and not less than 20 days in advance when the deposition is to be taken elsewhere, unless the Judge by order specifies a different time or excuses the witness from appearing for good cause shown.

(d) Each witness testifying upon deposition shall be sworn and any party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the officer before whom the deposition is taken. All transcription costs associated with the testimony of a deposed witness are to be borne by the party seeking the deposition. Copies of the transcripts shall be made available to any party upon payment of the fee provided in the agreement with the reporter. See also § 904.252(d).

(e) Subject to such objections to the questions and answers as were noted at the time of taking the deposition (or, if reserved, as made at the hearing) which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

§ 904.242 Interrogatories, requests for admission, and production of documents.

Any party may serve written interrogatories or a request for admission of facts upon another party. A party served with written interrogatories or a request for admissions shall answer such interrogatories or requests within 15 days of service, unless the Judge by order specifies a different time or excuses the party from answering for good cause shown. Interrogatories shall be answered under oath.

§ 904.243 Subpoenas.

(a) The attendance and testimony of witnesses and the production of documentary evidence at any designated place of hearing on behalf of any party to the proceeding may be required by subpoena as authorized by the statute under which the proceeding is conducted. Subpoenas shall be issued upon a reasonable showing by the applicant of the grounds and necessity thereof. With respect to subpoenas for the production of documents, the request shall also show their competency, relevancy, and materiality. All requests for subpoenas shall be in writing, unless waived for good cause shown. Except for good cause shown, requests for subpoenas shall be submitted by the applicant at least 10 days prior to the date set for hearing.

(b) Any person served with a subpoena may move within 10 days of service, or at hearing, whichever is sooner, to quash or modify the subpoena. The subpoena will be quashed or modified if it is beyond the scope of discovery; does not describe with sufficient particularity the evidence required to be produced; or is for any other reason insufficient in law, or the subpoena is found to be invalid or unreasonable. Any ruling quashing or modifying a subpoena will state the grounds for such action.

(c) Upon the failure of any person to comply with an order to testify or a subpoena directed or issued, the party requesting the order or subpoena may apply to the appropriate district court for enforcement of the order or subpoena.

(d) A subpoena for the attendance of an Agency employee or for the production of Agency evidence shall be served upon the Agency counsel. Agency counsel may file a motion to quash the subpoena within 10 days of service of the subpoena and prohibit such attendance or production until such time as the Judge rules on the motion to quash.

§§ 904.244—904.249 [Reserved]

HEARINGS

§ 904.250 Notice of time and place.

(a) The Judge shall promptly cause to be served on the parties notice of the time and place of hearing, and the hearing will not, except in extraordinary circumstances, be held less than

10 days after service of the notice of hearing.

(b) Unless otherwise required by the statute involved, the hearing will not necessarily be scheduled to take place where the respondent resides; however, if practicable, an attempt will be made to schedule the hearing within a reasonable proximity of where the respondent resides.

(c) The Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing.

§ 904.251 Evidence.

(a) At the hearing, every party shall have the right to present oral or documentary evidence in support of his/her case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph shall not be interpreted to diminish the powers and duties of the Judge under this subpart.

(b) All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible at the hearing, except that formal rules of evidence shall not necessarily apply to the proceedings; and hearsay evidence shall not be inadmissible as such.

(c) Formal exceptions to the rulings of the Judge are unnecessary. It is sufficient that a party, at the time of the ruling, makes known the action which he/she desires the Judge to take or his/her objection to an action taken, and the grounds therefor. Rulings on each objection shall appear in the record.

§ 904.252 Witnesses.

(a) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(b) Any witness not a party may have personal counsel to advise him/her as to his/her rights but such counsel may not otherwise participate in the hearing.

(c) If such procedure is requested by either party, or upon the Judge's own initiative, witnesses who are not parties may be excluded from the hearing room prior to taking of their testimony.

(d) Witnesses subpoenaed under these Rules, including § 904.243, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

(e) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness shall provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent interpreters are to be used. Provisions shall also be made to have any exhibits in a foreign language translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits shall be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

§ 904.253 Interlocutory appeals.

(a) At the request of a party or on the Judge's own initiative, the Judge may certify to the Administrator authority for review a ruling which does not finally dispose of the proceeding if the Judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the Judge of the interlocutory ruling for review, the Administrator shall expeditiously decide the matter. The parties shall have 10 days to serve any briefs associated with the certification.

(c) No interlocutory appeal shall lie as to any ruling not certified by the Judge.

§ 904.254 Ex parte communications.

(a) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of ex parte matters as authorized by law, upon assignment of a matter to the Judge and until the final decision of the Agency is effective under these regulations, no ex parte communication relevant to the merits of the proceeding shall be made, or knowingly caused to be made:

(1) By the Judge or by an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce; or

(2) By an interested person outside the Department of Commerce to the Judge or to any Agency employee involved in the decisional process of the proceeding.

(c) An Agency employee or Judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the Judge, or Administrator as appropriate, may take action in this respect consistent with these rules, the applicable statute, and 5 U.S.C. 556(d) and 557(d).

(d) Paragraphs (b) and (c) of this section do not apply to communications to or from the Agency counsel; however, the Agency counsel may not participate or advise in the decision of the Judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the Judge may not consult any person or party on a fact in issue unless notice and opportunity for all parties to participate is provided.

(e)(1) Paragraphs (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such ex parte communications:

(i) On national defense or foreign policy matters to or from an Agency employee; or

(ii) From employees of the United States Government involving intergovernmental negotiations are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex parte communication subject to paragraph (e) of this section shall be made a part of the record to the extent that they do not include information classified pursuant to an Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

§§ 904.255—904.259 [Reserved]

POST-HEARING

§ 904.260 Official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided in the agreement with the reporter.

(b) The Judge may determine whether "ordinary copy," "daily copy," or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§ 904.261 Petition for reconsideration.

Unless an order of the judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of final orders. Neither the filing nor the granting of a petition for reconsideration shall operate as a stay of an order or its effectiveness date (including for purposes of § 904.272) unless specifically so ordered by the Judge. Within 10 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition. The Judge may in his/her discretion reopen the hearing to consider matters raised in a petition which could not reasonably have been foreseen prior to issuance of the order or decision.

§ 904.262 Proposed findings and conclusions.

(a) Unless a different schedule is established in the discretion of the Judge, including the procedure of paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days after the Judge closes the hearing. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the Judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the Judge may require that any proposed findings and conclusions and reasons in support, be presented orally at the close of the hearing. In such case, the Judge will advise the parties in advance of hearing.

§ 904.263 Documents, copies and exhibits.

(a) When documents have been received in evidence, a true copy thereof, or of such part as may be material or relevant, may be submitted in lieu of the original during the hearing or at its conclusion. After a decision has become final, the Judge may, in his/her discretion, and after notice to other parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the Judge in his/her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the Judge, before or after decision.

§§ 904.264—904.269 [Reserved]

DECISION

§ 904.270 Record of decision.

(a) The official transcript of testimony and proceedings, exhibits, briefs, requests, and other documents filed or officially noticed in the proceeding, together with all rulings of the Judge thereon, shall constitute the exclusive record for decision. The record shall also be accompanied by any rejected exhibits, being specifically so marked, and any record of *ex parte* communications, also specifically so marked.

(b) The Chief Administrative Law Judge shall arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

§ 904.271 Decision.

(a) After expiration of the period provided in § 904.262 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge shall render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and the ruling on any findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision, if the parties have not previously been advised of such notice; and

(3) Such other matters as the Judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge may, after submission of briefs, direct the prevailing party to prepare proposed findings, conclusions, and an order within a time frame prescribed by the Judge.

(d) The Judge shall transmit the written decision to each of the parties by registered or certified mail, return receipt requested, and shall promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate, except in such particulars as are specified.

§ 904.272 Administrative review of decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served.

(b) Review of an initial decision is not a matter of right, but rests with the sound discretion of the Administrator. Unless a petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative, an initial decision will become effective as the final decision of the Administrator 30 days after service, unless otherwise provided by statute or regulations. Such petition shall be accomplished by proof of service upon all parties. If a party files a timely petition for discretionary review within that 30 day period, or action to review is taken by the Administrator upon his/her own initiative, the effectiveness of the decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent;

(3) A substantial and important question of law, policy, or discretion is involved; or

(4) A prejudicial procedural error has occurred.

(d) Each issue shall be separately numbered and concisely stated. Each issue shall be supported by detailed citations of the record, and by statutes, regulations, or principal authorities relied upon. Matters of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision of the Judge, or could not reasonably have been foreseen and raised by the parties during the hearing.

(e) No oral argument on petitions for discretionary review will be permitted.

(f) Within 21 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies shall be permitted.

(g) The Administrator's decision declining to exercise discretionary review will specify the date upon which the Judge's decision shall become effective as the final decision of the Administrator. Reasons for the Administrator's decision need not be stated unless he/she wishes to state a different reason than those of the Judge. To the extent the Administrator's decision is silent as to any material issue of fact, law, or discretion presented by the record, the decision is deemed to adopt the findings, conclusions, and reasons in the initial decision. A petition for reconsideration of an Administrator's decision declining review will not be permitted.

(h) The Administrator may review the record and issue a final order without further proceedings on any or all the issues where he/she finds that matters raised do not warrant further proceedings. If the Administrator desires further proceedings, he/she will issue an order for review limiting the issues for review and the procedures to be followed. Such issues may constitute one or more of the issues raised in a petition for discretionary review and/or matters which the Administrator desires to review on his/her own initiative. Only those issues specified in the order shall be argued on brief to the Administrator and considered by the Administrator.

§§ 904.273—904.299 [Reserved]

Subpart D—Permit Sanctions and Denials

AUTHORITY: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Endangered Species Act of 1973, 16 U.S.C. 1531-43; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.;* Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.;* Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

SOURCE: 49 FR 1038, Jan. 6, 1984, unless otherwise noted.

GENERAL

§ 904.300 Scope and applicability.

(a) This Subpart establishes policies and procedures for the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of many of the statutes NOAA administers. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this Subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this Subpart, the provisions of Subparts B and C apply to these regulations.

(b) These regulations cover sanctions and denials of permits issued under the following statutes:

(1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;

(2) Endangered Species Act of 1973, 16 U.S.C. 1531-43;

(3) Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.;*

(4) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.;*

(5) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;

(6) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34;

(7) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

Regulations governing sanctions for permits under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR Part 970; under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR Part 981; under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-27), at 50 CFR 260.50.

§ 904.301 Definitions.

Unless the context otherwise requires, terms in this Subpart have the meanings prescribed in the applicable statute or in Subparts B and C. In addition, the following definitions apply:

"Applicant"—means any person who applies or is expected to apply for a permit covered by this Subpart.

"NIDP"—means notice of intent to deny application or permit.

"NOPS"—means notice of permit sanction.

"Payment agreement"—means any promissory note, security agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

"Permit holder"—means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

"Sanction"—means suspension, revocation, or modification of a permit (see § 904.320).

§ 904.302 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, the Administrator may take action under this Subpart with respect to any permit issued under the statutes listed in § 904.300(b). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by statutes administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under Subparts B and C of this Part; or

(3) The failure to pay a criminal fine imposed or any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction or denial of a permit under this Subpart is not limited to the particular permit pertaining to the offense or nonpayment, but may be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in a different fishery. NOAA may withhold that permit until the sanction against Vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of

its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation zone with Captain X aboard. (See § 904.320(c) of this Part 904.)

(c) Sanction not extinguished by sale. [Reserved]

§ 904.303 Notice of permit sanction.

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322). If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction will take effect pursuant to § 904.306.

(c) Upon demand by an authorized enforcement officer, a permit holder shall surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

§ 904.304 Notice of intent to deny permit.

(a) The Administrator may issue an NIDP if the applicant has been charged with a violation of a NOAA-administered statute, regulation, or permit.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.303(a).

(c) The Administrator will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit pursuant to § 904.310(c) or § 904.320.

§ 904.305 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this Part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) If no hearing is requested, the Administrator may nonetheless order a hearing if required in the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

§ 904.306 Hearing and decision.

(a) Except as provided in this section, hearing procedures are governed by Subpart C of this Part.

(b) After the close of a hearing and the submission of briefs in accordance with § 904.262, the Administrative Law Judge will issue a recommended decision to the Administrator. As soon as practicable, the Administrator will decide the matter and serve notice of the decision on the parties in the manner provided by § 904.303(a). The decision will be final and unappealable and not subject to § 904.272.

(c) In his or her discretion, the Administrator may refrain from issuing a decision on a NOPS or NIDP pending a decision on a related matter.

§§ 904.307—904.309 [Reserved]

SANCTIONS FOR NONPAYMENT OF PENALTIES

§ 904.310 Nature of sanctions.

(a) The Administrator may suspend a permit if:

(1) A civil penalty has been assessed against the permit holder under Subparts B and C of this Part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) Suspension of a permit under the circumstances set forth in paragraph (a) is mandatory if the permit is for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act.

(c) The Administrator will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to the Administrator for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by affirmative order of the Administrator; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

§§ 904.313—904.319 [Reserved]

SANCTIONS FOR VIOLATIONS

§ 904.320 Nature of sanctions.

Subject to the requirements of this Subpart, the Administrator may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of the permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of the Administrator.

§ 904.322 Interim action.

(a) To prevent substantial harm to marine resources during the pendency of an action under this Subpart, or as otherwise required in the interest of public health, welfare, or safety, or in cases of willfulness, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) only after finding that there exists probable cause to believe that the violation(s) charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Administrator will expedite any hearing requested under § 904.305.

§§ 904.323—904.399 [Reserved]

Subpart E—Written Warnings

AUTHORITY: Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Lacey Act Amendments of 1981, 16 U.S.C. 3371-3372; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;* Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;* Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g; Sponge Act, 16 U.S.C. 781 *et seq.;* Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412; Whaling Convention Act of 1949, 16 U.S.C. 916-916*l*; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.;* Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.;* and the Merchant Marine Act of 1936, 46 U.S.C. 1271-1279.

SOURCE: 49 FR 1036, Jan. 6, 1984, unless otherwise noted.

§ 904.400 Purpose and scope.

These regulations provide a uniform policy and procedure regarding the issuance and use of written warnings by persons authorized to enforce the statutes administered by the National Oceanic and Atmospheric Administration (NOAA). A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the fishery or marine resource laws that NOAA administers, including the following:

Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627;
Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412;
Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g;
Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.;*
Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;*
Endangered Species Act of 1973, 16 U.S.C. 1531-1543;
Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.;*
Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;
Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;
Merchant Marine Act of 1936, 46 U.S.C. 1271-1279;
Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;
North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;
Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;*
Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;
Sponge Act, 16 U.S.C. 781 *et seq.;*
Tuna Conventions Act of 1950, 16 U.S.C. 951-961;
Whaling Convention Act of 1949, 16 U.S.C. 916-916*l*.

§ 904.405 Definitions.

A written warning is a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person. A "citation" under Section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and Section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c), is considered a written warning under these regulations.

§ 904.410 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

§ 904.415 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.400 of this Subpart E who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will: (1) State that it is a "written warning"; (2) state the factual and statutory or regulatory basis for its issuance; (3) advise the violator of its effect in the event of a future violation; and (4) inform the violator of the right of review and appeal under § 904.420 of this Subpart E.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

§ 904.420 Review and appeal of a written warning.

(a) If a person believes that he or she should not have been given a written warning, the person may, within 90 days of the date of receipt of the written warning, submit to the appropriate NOAA Regional Attorney in writing the facts and circumstances that explain or deny the violation described in the warning. The NOAA Regional Attorneys are located at:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930
Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 127, St. Petersburg, FL 33702
Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115
Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2020, Terminal Island, CA 90731
Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802.

The Regional Attorney will review the information and notify the person of his or her decision.

(b) A person may appeal the decision of the Regional Attorney to the NOAA Assistant General Counsel for Enforcement and Litigation, Room 275, Page I Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235. The appeal must be brought within 30 days of receipt of the decision of the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the appellant of the decision. The decision constitutes the final agency action.

Subpart F—Seizure and Forfeiture Procedures

AUTHORITY: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i; Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601-3608; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.* (as amended by Pub. L. 98-129); Lacey

Act Amendments of 1981, 16 U.S.C. 3371-3378; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Sponge Act, 16 U.S.C. 781 *et seq:* Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

Source: 50 FR 12782, Apr. 1, 1985, unless otherwise noted.

§ 904.500 Purpose and Scope.

(a) This Subpart establishes procedures relating to seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by the National Oceanic and Atmospheric Administration (NOAA).

(b) Except as provided in this Subpart, these regulations apply to all seized property subject to forfeiture under the following statutes:

(1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i;

(2) Atlantic Salmon Convention Act of , 1982, 16 U.S.C. 3601-3608;

(3) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(4) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;

(5) Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*;

(6) Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;

(7) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;

(8) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;

(9) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;

(10) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;

(11) North Pacific Fisheries Act of 1954; 16 U.S.C. 1021-1032;

(12) Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;

(13) Sponge Act, 16 U.S.C. 781 *et seq.*;

(14) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;

This Subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of items seized under these statutes.

§ 904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made pursuant to a search warrant, the Administrator, or his or her designee, will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under § 904.506(b)(2)(G) of this Subpart). The notice may be combined with a notice of the sale of perishable fish issued under § 904.505 of this Subpart.

§ 904.502 Bonded release.

The Administrator may, in his or her sole discretion, release any seized property upon deposit with the Administrator of the full value of the property or such lesser amount as the Administrator deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In addition, the Administrator may, in his or her sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as the Administrator deems appropriate. The provisions of § 904.506(f) of this Subpart apply to the Administrator's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

§ 904.503 Appraisement.

The Administrator will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§ 904.504 Administrative forfeiture proceedings.

(a) *When Authorized.* Whenever any property seized under the Endangered Species Act of 1973, the Lacey Act Amendments of 1981, or the Fur Seal Act of 1966, is determined under § 904.503 of this Subpart to have a value of $100,000 or less, the Administrator may obtain its forfeiture under this section. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.*—(1) *Notice of Proposed Forfeiture.* The Administrator will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interests in the property are known or easily ascertainable.

(2) *Contents.* The notice of proposed forfeiture will:

(i) Describe the seized property, including any applicable registration or serial numbers;

(ii) State the time, place and reason for the seizure; and

(iii) Describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3) *Filing a Claim and Bond.*—(i) *Claim.* Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with the Administrator, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim shall state the claimant's interest in the property.

(ii) *Bond.* Except as provided in paragraphs (b)(3)(E) or (b)(4) of this section, a bond for costs in the penal sum of $5,000 or 10 percent of the appraised value of the property, whichever is lower, but not less than $250, with sureties satisfactory to the Administrator, shall be filed with the claim for seized property. The bond may be posted by certified check or on Customs form 4615 (or a similar form provided by NOAA). There shall be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

____

____

The foregoing list is correct.

____

Claimant.

Attest

____

____

(iii) *Claimant Not Entitled to Possfession.* Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iv) *Referral to Attorney General.* If the claim and bond are timely filed in accordance with this section, the Administrator will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(v) *Waiver of Bond.* Upon satisfactory proof of financial inability to post the bond, the Administrator may waive the bond requirement for any person claiming an interest in the seized property.

(4) *Motion for Stay.* Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with the Administrator within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion shall contain: (i) The claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. The Administrator, in his or her discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If the Administrator denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) *Summary Forfeiture.* If a claim and bond are not filed within 20 days of notice in accordance with this section, the Administrator will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of the Administrator.

(6) *Judicial Forfeiture.* If the appraised value of the property is more than $100,000, or a timely and satisfactory claim and bond for property appraised at $100,000 or less are submitted to the Administrator, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

[50 FR 12782, Apr. 1, 1985; 51 FR 1249, Jan. 10, 1986]

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section shall deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) The Administrator will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under §§ 904.502 or 904.506(f) of this Subpart.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission and mitigation of forfeiture.

(a) *Application of This Section.* (1) This section establishes procedures for filing with the Administrator a petition for relief from foreitures incurred, or alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) For purposes of this section, the "remission or mitigation of a forfeiture" or "relief from forfeiture" means action by the Administrator, following coordination as necessary with other federal agencies and the courts, to release from the custody of the United States all or part of property seized and subject to forfeiture, upon compliance with any terms and conditions set by the Administrator, such as payment of a stated amount in settlement of the forfeiture aspects of a violation. Although the Administrator may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless the Administrator expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of the Administrator only when consistent with the purposes of the particular statute involved and this section.

(3) The Administrator will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by the Administrator will be forwarded to the Attorney General for consideration.

(b) *Petition for Relief from Forfeiture.* (1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to the Administrator and filed with the Regional Director, National Marine Fishers Service, nearest to the place where the property is held:

Seattle, Washington 98115
Terminal Island, California 90731
Juneau, Alaska 99802
Gloucester, Massachusetts 01930
St. Petersburg, Florida 33702

The Administrator will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that the Administator will not consider a petition filed more than three months from the date of such declaration or decree. (See §904.507 of this Subpart regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but shall set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, support as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(v) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release, and the facts and circumstances relied upon by petitioner in the request;

(vi) The signature of the petitioner, his or her attorney, or other authorized agent; and

(vii) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings). A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* The Administrator will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on Petition.* (1) After investigation under paragraph (c) of this section, the Administrator will decide the matter and notify the petitioner. The Administrator may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(i) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(ii) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless the Administrator determines no valid purpose would be served, the Administrator will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to the Administrator, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, the Administrator may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. The Administrator may also require that the property be promptly exported from the United States.

(e) *Compliance with the Decision.* A decision by the Administrator to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to the Administrator for late compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of Seized Property Pending Decision.* (1) Upon request in the petition for relief from forfeiture, the Administrator may in his or her discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as the Administrator deems sufficient to protest the interests served by the applicable statute. The following, however, will not be released:

(i) Property in which the Administrator is not satisfied that the petitioner has a substantial interest;

(ii) Property whose entry into the commerce of the United States is prohibited;

(iii) Live animals, except in the interest of the animals' welfare;

(iv) Proceeds from the sale of seized property sold under § 904.505 of this Subpart (see § 904.507 of this Subpart regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(v) Where it appears to the Administrator that it would not be in the best interest of the United States or serve the purposes of the applicable statute to release the property.

(2) If the Administrator grants the request, the amount paid by petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by the petitioner of any claim arising from the seizure and custody of the property. The Administrator will maintain the money so deposited pending his further order, order of a court, or disposition by applicable administrative proceedings.

[50 FR 12782, Apr. 1, 1985; 51 FR 1249, Jan. 10, 1986]

§ 904.507 Petition for restoration of proceeds.

(a) The general provisions of § 904.506 of this Subpart on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition, to any evidence required under § 904.506 of this Subpart, the petition for restoration of proceeds shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds the Administrator may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§ 904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531-1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Administrator will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment shall be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with the Administrator at the address stated in the bill. The Administrator will promptly review the written objections and within 30 days mail his or her final decision to the party who filed them. The Administrator's decision will constitute final agency action on the matter.

PART 906—INTERNATIONAL AFFAIRS

Sec.
906.1 International training.
906.2 Foreign visitors.

§ 906.1 International training.

(a) NOAA provides training in its disciplines for representatives from various developing countries throughout the world. Those trained consist of the recipients of fellowships awarded by the United Nations and its Specialized Agencies; and the recipients of training awards from the Agency for International Development (AID), the Military Assistance Program (MAP), and under bilateral agreements arranged by the Department of State in cooperation with the participating foreign governments.

(b) Requests are received from the sponsors to provide training in the scientific and technical functions of NOAA, through individual training and/or through enrollment in recurring group courses. In individual or group training, the study program or course description is forwarded to the sponsor with the estimate cost or tuition fee and the amount of funds required for travel within the United States. Upon approval of the training program and the cost estimate, the sponsor informs the recipient of his acceptance and the date to begin training.

(c) Further information concerning eligibility of foreign nationals for training, course availability, course content, trainee qualifications, costs, funding, and other related information is available from the Director, International Affairs (IA), National Oceanic and Atmospheric Administration, Rockville, Md. 20852.

(Sec. 3, 26 Stat. 653, secs. 4-6, 61 Stat. 788, R.S. 4685; 15 U.S.C. 313, 22 U.S.C. 501, 33 U.S.C. 883d-883f, 884)

[32 FR 16257, Nov. 29, 1967; 35 FR 19249, Dec. 19, 1970]

§ 906.2 Foreign visitors.

(a) NOAA has been designated sponsor of an English-Visitor Program in accordance with the administrative regulations issued under the Mutual Educational and Cultural Exchange Act of 1961. The program is identified as Exchange-Visitor Program No. G-V-228, and has an official description as follows: "A program to provide training and research opportunities at the Administration's facilities in various parts of the United States, for qualified foreign specialists, as a measure to increase international rapport among those interested in the development of the environmental sciences, and to promote the general interests of international exchange."

(b) In addition to the Exchange-Visitor Program described in paragraph (a) of this section, NOAA also accepts other visitors from various countries having a mutual interest with the United States in the environmental sciences. The duration of these visits extends from 1 to 10 days. Programs are arranged in accordance with the specific interests of the visitors and may include orientation, review, and consultation on: Organizational structure; operating methods; equipment and instrumentation; scientific and technical procedures; research; or exchange of ideas.

(c) Further information concerning international visits is available from the Director, International Affairs (IA), National Oceanic and Atmospheric Administration, Rockville, Md. 20852.

(Sec. 3, 26 Stat. 653, secs. 4-6, 61 Stat. 788, R.S. 4685; 15 U.S.C. 313, 22 U.S.C. 501, 33 U.S.C. 883d-883f, 884)

[32 FR 16257, Nov. 29, 1967; 35 FR 19249, Dec. 19, 1970]

PART 907—ENVIRONMENTAL INFORMATION

§ 907.1 Environmental information.

(a) NOAA gathers, processes, and issues information on weather conditions, river water height, coastal tides and current, movement of ocean currents, structure and shape of ocean basins, seismic activity, the precise size and shape of the earth, and conditions of the upper atmosphere and space. It issues warnings against hurricanes, tornadoes, floods, and seismic seawaves to areas in danger.

(b) NOAA information falls into three broad categories, namely:

(1) Current information and warnings on the dynamic or continually changing aspects of the environment, such as the weather and other geophysical phenomena.

(2) Longer term information, such as navigation charts, compilations or summaries of historical environmental data, and earth and ocean surveys and measurements.

(3) Scientific and technical research publications dealing with the earth sciences.

(c) NOAA information is available in many forms and from many sources throughout NOAA.

(1) Current information is disseminated in the form of forecasts, advisories, and warnings, directly by the local offices of NOAA, of which there are approximately 350, or through relaying intermediaries, such as radio and TV stations and telephone recorders. The address of local NOAA offices can be obtained by consulting local phone directories, generally under the heading of Commerce Department—National Oceanic and Atmospheric Administration. The prime medium for disseminating weather information for the United States is the Daily Weather Map, which is available on a subscription basis. There is also published a Weekly Weather and Crop Bulletin, which narrates on a weekly basis the weather conditions and crop progress during the reporting period, generally on a State-by-State basis. Both the Daily Weather Map and the Weekly Weather and Crop Bulletin may be ordered from the Superintendent of Documents, Washington, DC 20402.

(2) Longer term information is available in various forms, such as charts, maps, books, and pamphlets, tabulations, individual data sheets, reproductions of original graphic recordings, and aerial photographs. These are

available at varying prices, from various offices within NOAA. Also navigation charts may be purchased from contract sales agents, generally airport and marina operators. Catalogs or price lists of items in this category are available on request. Navigation chart catalogs are available from the Chief, Distribution Division (C44), NOAA, Rockville, Md. 20852. Price lists of climatological data, geophysical data, and geodetic data are available from the Director, Office of Data Information (D4), NOAA, Silver Spring, Md. 20910. Requests or inquiries concerning other information in the longer term category, but excluding scientific and technical research publications, may be sent to the Chief, Administrative Controls Branch (AD14), NOAA, Rockville, Md. 20852, for referral to the responsible office.

(3) Scientific and technical research publications are disseminated in the form of printed journals, monographs, reports, and other paperbound publications. These range over the broad spectrum of the physical environment. Details concerning publications available and the prices may be obtained from the Chief, Scientific Information and Documentation Division (AD7), NOAA Rockville, Md. 20852. Many of NOAA's scientific and technical research publications are sold by the Clearinghouse for Federal Scientific and Technical Information, Springfield, Va. 22151, and by the Superintendent of Documents, Washington, DC 20402. Additional details concerning NOAA's scientific and technical publications are given in Appendix B of the U.S. Government Organization Manual, published annually.

(Reorganization Plan No. 2 of 1965, 5 U.S.C. App. 133z-15 note)

[32 FR 16257, Nov. 29, 1967, as amended at 35 FR 19247, Dec. 19, 1970]

PART 908—MAINTAINING RECORDS AND SUBMITTING REPORTS ON WEATHER MODIFICATION ACTIVITIES

Sec.
908.1 Definitions.
908.2 Persons subject to reporting.
908.3 Activities subject to reporting.
908.4 Initial report.
908.5 Interim reports.
908.6 Final report.
908.7 Supplemental reports.
908.8 Maintenance of records.
908.9 Retention of records.
908.10 Penalties.
908.11 Maintenance of records of related activities.
908.12 Public disclosure of information.
908.13 Address of letters.
908.14 Business to be transacted in writing.
908.15 Times for taking action; expiration on Saturday, Sunday, or holiday.
908.16 Signature.
908.17 Suspension or waiver of rules.
908.18 Matters not specifically provided for in rules.
908.19 Publication of notice of proposed amendments.
908.20 Effective date.
908.21 Report form.

AUTHORITY: Pub. L. 92-305, 85 Stat. 735, December 18, 1971.

SOURCE: 41 FR 23394, June 10, 1976, unless otherwise noted.

§ 908.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(b) *Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, except where acting solely as an employee, agent, or independent contractor of the Federal government.

(c) *Weather modification activity.* Any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(d) *United States.* The several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(e) *Persons whose activities relate to weather modification.* Persons engaged in weather modification activities or engaged in the distribution or sale of weather modification apparatus or materials known by them to be destined for use in weather modification activities.

(f) *Project.* A related series of weather modification activities having a common objective.

(g) *Target area.* The ground area within which the effects of the weather modification activity are expected to be found.

(h) *Control area.* A preselected, untreated ground area used for comparison with a target area.

(i) *Weather modification apparatus.* Any apparatus used with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere. For example: Seeding generators, propane devices, flares, rockets, artillery projectiles, jet engines, etc.

(j) *Sponsor.* The primary person for whom the weather modification activity is performed.

(k) *Operator.* The person who is primarily responsible for carrying out the weather modification activity.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.2 Persons subject to reporting.

Any person engaged or intending to engage in any weather modification activity in the United States shall be subject to the reporting provisions of this part.

§ 908.3 Activities subject to reporting.

(a) The following, when conducted as weather modification activities, shall be subject to reporting:

(1) Seeding or dispersing of any substance into clouds or fog, to alter drop size distribution, produce ice crystals or coagulation of droplets, alter the development of hail or lightning, or influence in any way the natural development cycle of clouds or their environment;

(2) Using fires or heat sources to influence convective circulation or to evaporate fog;

(3) Modifying the solar radiation exchange of the earth or clouds, through the release of gases, dusts, liquids, or aerosols into the atmosphere;

(4) Modifying the characteristics of land or water surfaces by dusting or treating with powders, liquid sprays, dyes, or other materials;

(5) Releasing electrically charged or radioactive particles, or ions, into the atmosphere;

(6) Applying shock waves, sonic energy sources, or other explosive or acoustic sources to the atmosphere;

(7) Using aircraft propeller downwash, jet wash, or other sources of artificial wind generation; or

(8) Using lasers or other sources of electromagnetic radiation.

(b) In addition to the activities listed above, other similar activities falling within the definition of weather modification as set forth in § 908.1 are also subject to reporting.

(c) The requirement for reporting shall not apply to activities of a purely local nature that can reasonably be expected not to modify the weather outside of the area of operation. This exception is presently restricted to the use of lightning deflection or static discharge devices in aircraft, boats, or buildings, and to the use of small heat sources, fans, fogging devices, aircraft downwash, or sprays to prevent the occurrence of frost in tracts or fields planted with crops susceptible to frost or freeze damage. Also expected from the requirement for reporting are religious activities or other ceremonies, rites and rituals intended to modify the weather.

(d) All activities noted in paragraphs (a) and (b) of this section are subject to initial reporting. However, after the Administrator has received initial notification of a planned activity, he may waive some of the subsequent reporting requirements. This decision to waive certain reporting requirements will be based on the general acceptability, from a technical or scientific viewpoint, of the apparatus and techniques to be used.

(e) Other reporting exceptions may be made in the future by rule of the Administrator.

§ 908.4 Initial report.

(a) Any person intending to engage in any weather modification project or activity in the United States shall provide a report of his intention, to be received by the Administrator at least 10 days before the commencement of such project or activity. This report shall contain at least the following:

(1) The designation, if any, used by the operator for the project or activity;

(2) The following dates for weather modification activities:

(i) The date the first actual weather modification activity is to be undertaken;

(ii) The date on which the final modification activity is expected to occur;

(3) The following information on persons involved with the project or activity:

(i) The name, affiliation, and address of the sponsor;

(ii) The name, affiliation, and address of the operator;

(4) The purpose of the project or activity;

(5) A map showing the approximate size and location of the target and control areas, and the location of each item of ground-based weather modification apparatus, precipitation measuring device, and, for airborne operations, the airport;

(6) A description of the weather modification apparatus, modification agents, and the techniques to be employed;

(7) The name and address of the responsible individual from whom log books or other records of the project or activity may be obtained;

(8) Answers to the following questions on project safeguards:

(i) Has an Environmental Impact Statement, Federal or State, been filed: Yes—— No ——. If Yes, please furnish a copy as applicable.

(ii) Have provisions been made to acquire the latest forecasts, advisories, warnings, etc. of the National Weather Service, Forest Service, or others when issued prior to and during operations? Yes —— No ——. If Yes, please specify on a separate sheet.

(iii) Have any safety procedures (operational contraints, provisions for suspension of operations, monitoring methods, etc.) and any environmental guidelines (related to the possible effects of the operations) been included in the operational plans? Yes —— No ——. If Yes, please furnish copies or a description of the specific procedures and guidelines; and

(9) Optional remarks, to include any additional items which the person deems significant or of interest and such other information as the Administrator may request the person to submit.

(b) If circumstances prevent the signing of a contract or agreement to perform, or receipt of an authorization to proceed with, a weather modification activity at a date early enough to comply with paragraph (a) of this section, the initial report shall be provided so as to be received by the Administrator within 10 days of the date of signing of the contract or agreement, or receipt of authorization to proceed. In such cases, the report shall be accompanied by an explanation as to why it was not submitted at least 10 days prior to the commencement of the activity.

(c) In the event that circumstances beyond the control of the person liable to report under these regulations prevent the submission of the initial report in a timely manner as described above, the report shall be forwarded as early as possible, accompanied by an explanation as to why a timely report has not been provided. If such explanation is deemed adequate, the Administrator will consider the report as timely filed.

§ 908.5 Interim reports.

(a) Any person engaged in a weather modification project or activity in the United States on January 1 in any year shall submit to the Administrator, not later than 45 days thereafter, an interim report setting forth as of such date the information required below with respect to any such continuing project or activity not previously furnished to the Administrator in a prior interim report; provided that the January 1 date shall not apply if other arrangements have previously been made with the written approval of the Administrator.

(b) The interim report shall include the file number assigned by the Administrator and shall provide a summary of the project or activity containing at least the following information for each month:

(1) Number of days on which actual modification activities took place;

(2) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities;

(3) Total number of hours of operation of each type of weather modification apparatus (i.e., net hours of agent release);

(4) Total amount of agent used. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(c) The totals for the items in paragraph (b) of this section shall be provided for the period covered by the interim report.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.6 Final report.

Upon completion of a weather modification project or activity the person who performed the same shall submit a report to the Administrator not later than 45 days after completion of the project or activity. The report shall include the file number assigned by the Administrator and the following items:

(a) Information required for the interim reports (to the extent not previously reported).

(b) The total number of days on which actual modification activities took place during the project or activity.

(c) The total number of days during the project or activity on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(d) The total number of hours of operation of each type of weather modification apparatus during the project or activity (i.e., net hours of agent release).

(e) The total amount of modification agent(s) dispensed during the project or activity. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(f) The date on which the final weather modification activity occurred.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.7 Supplemental reports.

Notwithstanding other regulations, a supplemental report in letter form referring to the appropriate NOAA file number, if assigned, must be made to the Administrator immediately if any report of weather modification activities submitted under § 908.4, § 908.5, or § 908.6 is found to contain any material inaccuracies, misstatements, and omissions. A supplemental report must also be made if there are changes in plans for the project or activity.

§ 908.8 Maintenance of records.

(a) Any person engaging in a weather modification activity in the United States shall maintain a record of such activity. This record shall contain at least the following, when applicable:

(1) A chronological record of activities carried on, preferably in the form of a daily log, which shall include the NOAA file number assigned to the project, the designation of each unit of weather modification apparatus, and at least the following information for each unit:

(i) Date of the weather modification activity.

(ii) Position of each aircraft or location of each item of weather modification apparatus during each modification mission. Maps may be used.

(iii) Time when weather modification activity began and ended.

(iv) Total duration of operation of each unit of weather modification apparatus (i.e., net hours of agent release).

(v) Type of each modification agent used.

(vi) Rate of dispersal of each agent during the period of actual operation of weather modification apparatus.

(vii) Total amount of agent used. If more than one agent was used, report total for each type separately.

(viii) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(2) The monthly totals of hours of modification activity, the amount of modification agent used, and the number of days on which weather

modification activities were conducted, segregated by each of the major purposes of the activities, shall be shown on the daily log sheet for the last day of each month.

(b) When the activity involves ground-based weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made part of the daily log:

(1) The location of each item of weather modification apparatus in use and its identification such as type and manufacturer's model number. If the apparatus is not commercially available, a brief description of the apparatus and the method of operation should be recorded.

(2) The name and address of the person responsible for operating each weather modification apparatus.

(3) The altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(c) When the activity involves airborne weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made a part of the daily log: For each airborne weather modification apparatus run: Altitude, air speed; release points of modification agents, method of modification and characteristics of flares, rockets, or other delivery systems employed; temperature at release altitude; and, for aircraft: The type of aircraft, its identification number, the airport or airports used, and the names and addresses of crew members and the person responsible for operating the weather modification apparatus; and the altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(d) The following records shall also be maintained, whenever applicable, but need not be made a part of the daily log. Only data specifically collected for the reported activity need be retained; data available from other sources need not be included.

(1) Any descriptions that were recorded of meteorological condiitons in target and control areas during the periods of operation; for example: Percent of cloud cover, temperature, humidity, the presence of lightning, hail, funnel clouds, heavy rain or snow, and unusual radar patterns.

(2) All measurements made of precipitation in target and control areas.

(3) Any unusual results.

§ 908.9 Retention of records.

Records required under § 908.8 shall be retained and available for inspection by the Administrator or his designated representatives for 5 years after completion of the activity to which they relate. Such records shall be required to be produced for inspection only at the place where normally kept. The Administrator shall have the right to make copies of such records, if he deems necessary.

§ 908.10 Penalties.

Knowing and willful violation of any rule adopted under the authority of section 2 of Pub. L. 92-205 shall subject the person violating such rule to a fine of not more than $10,000, upon conviction thereof.

§ 908.11 Maintenance of records of related activities.

(a) Persons whose activities relate to weather modification activities, other than persons engaged in weather modification activities, shall maintain records concerning the identities of purchasers or users of weather modification apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases. Such information shall be retained for at least 5 years.

(b) In addition, persons whose activities relate to weather modification shall be required, under the authority of section 4 of Pub. L. 92-205, to provide the Administrator, on his request, with information he deems necessary to carry out the purposes of this act.

§ 908.12 Public disclosure of information.

(a) Any records or other information obtained by the Administrator under these rules or otherwise under the authority of Pub. L. 92-205 shall be made publicly available to the fullest practicable extent. Such records or information may be inspected on written request to the Administrator. However, the Administrator will not disclose any information referred to in section 1905 of title 18, United States Code, and that is otherwise unavailable to the public, except that such information shall be disclosed:

(1) To other Federal government departments, agencies, and officials for official use upon request;

(2) In any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) To the public, if necessary to protect their health and safety.

(b) Certified copies of such reports and information, to the extent publicly disclosable, may be obtained from the Administrator at cost in accordance with the Department of Commerce implementation of the Freedom of Information Act.

(c) Persons reporting on weather modification projects or related activities shall specifically identify all information that they consider not to be subject to public disclosure under the terms of Pub. L. 92-205 and provide reasons in support thereof. A determination as to whether or not reported information is subject to public dissemination shall be made by the Administrator.

(d) When consideration of a weather modification activity report and related information indicates that a proposed project may significantly depart from the practices or procedures generally employed in similar circumstances to avoid danger to persons, property, or the environment, or indicates that success of Federal research projects may be adversely affected if the proposed project is carried out as described, the Administrator will notify the operator(s) and State officials of such possibility and make recommendations where appropriate. The purpose of such notification shall be to inform those notified of existing practices and procedures or Federal research projects known to NOAA. Notification or recommendation, or failure to notify or recommend, shall not be construed as approval or disapproval of a proposed project or as an indication that, if carried out as proposed or recommended it may, in any way, protect or endanger persons, property, or the environment or affect the success of any Federal research project. Any advisory notification issued by the Administrator shall be available to the public and be included in the pertinent activity report file.

§ 908.13 Address of letters.

Letters and other communications intended for the Administrator, in connection with weather modification reporting or activities, shall be addressed to: The Administrator, National Oceanic and Atmospheric Administration, Environmental Modification Office, Rockville, Md. 20852.

§ 908.14 Business to be transacted in writing.

All business transacted with the National Oceanic and Atmospheric Administration with regard to reports of weather modification activities should be transacted in writing. Actions of the National Oceanic and Atmospheric Administration will be based exclusively on the written record.

§ 908.15 Times for taking action; expiration on Saturday, Sunday, or holiday.

Whenever periods of time are specified in these rules in days, calendar days are intended. When the day, or the last day, fixed under these rules for taking any action falls on a Saturday, Sunday, or on a Federal holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

§ 908.16 Signature.

All reports filed with the National Oceanic and Atmospheric Administration must be dated and signed by or on behalf of the person conducting or intending to conduct the weather modification activities referred to therein by such person, individually or, in the case of a person other than an individual, by a partner, officer, or other person having corresponding functions and authority. For this purpose "officer" means a president, vice president, treasurer, secretary, or comptroller. Notwithstanding the foregoing, such reports may also be signed by the duly authorized agent or attorney of the person whose activities are being reported. Proof of such authorization shall be furnished to the Administrator when filing a report, unless previously furnished.

§ 908.17 Suspension or waiver of rules.

In an extraordinary situation, any requirement of these rules may be suspended or waived by the Administrator on request of the interested party, to the extent such waiver is consistent with the provisions of Pub. L. 92-205 and subject to such other requirements as may be imposed.

§ 908.18 Matters not specifically provided for in rules.

All matters not specifically provided for or situations not specifically addressed in these rules will be decided in accordance with the merits of each case by or under the authority of the Administrator, and such decision will be communicated in writing to all parties involved in the case.

§ 908.19 Publication of notice of proposed amendments.

Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER. If not published with the notice, copies of the text of proposed amendments will be furnished to any person requesting the same. All comments, suggestions, and briefs received within the time specified in the notice will be considered before adoption of the proposed amendments, which may be modified in the light thereof. Informal hearings may be held at the discretion of the Administrator.

§ 908.20 Effective date.

These rules are effective on June 10, 1976.

§ 908.21 Report form.

Pub. L. 92-205 and these rules should be studied carefully prior to reporting. Reports required by these rules shall be submitted on forms obtainable on request from the Administrator, or on an equivalent format.[1] In special situations, such alterations to the forms as the circumstances thereto may render necessary may be made, provided they do not depart from the requirements of these rules or of Pub. L. 92-205.

PART 909—POLICIES AND PROCEDURES REGARDING DISCLOSURE OF INFORMATION AND NOAA EMPLOYEE TESTIMONY IN LITIGATION NOT INVOLVING THE UNITED STATES

Sec.
909.1 Purpose and policy.
909.2 Disclosure and certification of information and records.
909.3 Response to subpena duces tecum.
909.4 Testimony by NOAA employees in litigation not involving the United States.
909.5 Conditions for authorizing testimony.

AUTHORITY: 15 U.S.C. 315, 1512, 1518; 33 U.S.C. 884; 43 U.S.C. 1458, 1460, 1461.

Source: 43 FR 36240, Aug. 16, 1978, unless otherwise noted.

§ 909.1 Purpose and policy.

(a) The regulations in this part describe NOAA policies and procedures for the disclosure of information, records, and data to parties and testimony by NOAA employees in litigation not involving the United States.

(b) It is the policy of NOAA to provide information, data, and records to non-Federal litigants to the same extent that they are available to the general public. The availability of NOAA employees to testify in non-Federal litigation is governed by the NOAA policy of maintaining strict impartiality among non-Federal litigants. To this end NOAA witnesses generally may provide only factual testimony except as provided for in § 909.5(c) and shall not appear as expert witnesses in litigation not involving the United States.

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[1] Filed as part of the original document.

§ 909.2 Disclosure and certification of information and records.

(a) Requests for identifiable information, records, and data in NOAA's possession will be complied with consistent with the NOAA freedom of information regulation (15 CFR Part 903), the Department of Commerce privacy regulations (15 CFR Part 4b), and 15 U.S.C. 1525. Requests for records, information, and data should be addressed as specified in 15 CFR Part 903.

(b) Certified copies of NOAA records will be provided upon request. Requests for certified copies of these types of information should be referred to the following offices: Weather and Climatological Records; Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service, NOAA, Federal Building, Asheville, NC 28801. Weather Forecasts and Warnings; Aviation Services Branch (W/OM13), National Weather Service, NOAA, Silver Spring, MD 20910. Aeronautical Charts; Aeronautical Charting Division (N/CG3), National Ocean Service, NOAA, Rockville, MD 20852. Nautical Charts; Chart Information Section (N/GC222), National Ocean Service, NOAA, Rockville, MD 20852. Other; Office of the General Counsel, National Oceanic and Atmospheric Administration, Washington, DC 20230.

(c) Requests for the appearance of NOAA employees to give testimony in litigation not involving the United States should be addressed to the Office of General Counsel at the address shown in paragraph (b) of this section.

[43 FR 36240, Aug. 16, 1978, as amended at 48 FR 17064, Apr. 21, 1983]

§ 909.3 Response to subpena duces tecum.

(a) Any officer or employee served with a subpena duces tecum or the equivalent for the production of any NOAA record shall promptly notify the Office of General Counsel. The subpena duces tecum shall be treated as a request for records, information, or data under 15 CFR Part 903.

(b) The officer or employee served shall decline to produce the record that is the subject of a subpena duces tecum until its release has been authorized pursuant to 15 CFR Part 903. If, as a result of having complied with the preceding sentence of this subsection, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpena, the General Counsel shall request the Department of Justice to represent the officer or employee.

§ 909.4 Testimony by NOAA employees in litigation not involving the United States.

(a) No NOAA officer or employee shall give testimony in any tribunal concerning any function of NOAA, or any data, information, or record created or acquired by NOAA as a result of the discharge of its official duties, without the prior authorization of the general counsel or the general counsel's designee.

(b) Upon receiving a subpena which orders the giving of testimony, a NOAA officer or employee shall immediately notify the Office of General Counsel. The officer or employee shall decline to testify unless otherwise authorized by the general counsel or designee. If, as a result of having complied with the provisions of this section, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpena, the general counsel shall request the Department of Justice to represent the officer or employee.

§ 909.5 Conditions for authorizing testimony.

(a) Any non-Federal party desiring testimony from a NOAA officer or employee shall make a written request therefor addressed to the Office of General Counsel. The request shall include a general statement of the testimony to be elicited, the requester's interest in that testimony, a brief description of the intended use of the testimony and a statement as to why the testimony is not available elsewhere.

(b) The general counsel or designee shall authorize a NOAA officer or employee to provide factual testimony when the requesting party has sufficiently shown: (1) That the evidence to be adduced is not reasonably available from any other source; (2) that no NOAA record or data could be introduced in evidence in substitution for the testimony; and (3) that the other requirements of this part have been met.

(c) Where less than all of the conditions of paragraph (b) of this section are met, the general counsel or designee may authorize NOAA employees and officers to provide factual or expert testimony on any matters where NOAA has a significant interest in the litigation and the outcome may affect the implementation present or future policies, or where circumstances or conditions make it necessary to provide the information in the public interest.

(d) If the general counsel or designee authorizes the testimony of a NOAA officer or employee, then the Office of General Counsel may arrange for the taking of the testimony by methods that are less disruptive of the official activities of the officer or employee than providing testimony in court. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other method allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony.

PART 911—THE UNITED STATES GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITE (GOES) DATA COLLECTION SYSTEM (DCS)

Sec.

911.1 General information.
911.2 Use of the GOES DCS.
911.3 Treatment of data.
911.4 Continuation of GOES-DCS.
911.5 GOES-DCS Use Agreements.

AUTHORITY: 15 U.S.C. 313; 49 U.S.C. 1463; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

SOURCE: 46 FR 48635, Oct. 2, 1981, unless otherwise noted.

§ 911.1 General information.

(a) The GOES Data Collection System (DCS) provides an effective method for obtaining environmental data from remote locations where conventional communications are either absent or inadequate. The use of the DCS is limited to the collection of environmental data in accordance with applicable International Telecommunication Union (ITU) regulations concerning use of the allocated frequency bands.

(b)(1) The DCS was established in 1974 to obtain from remote locations data required for the effective accomplishment of programs of the National Oceanic and Atmospheric Administration. The DCS capacity can more than provide for all of NOAA's present and near future domestic and international requirements. This makes it possible to offer to Federal and State agencies or local governments of the United States, and to those private users and foreign government agencies whose use of the system would support a program of a United States agency, the opportunity to make use of the DCS. Policy guidelines are set forth below.

(2) For purposes of this part, "user" refers to a private or governmental organization, whether for-profit or not for-profit, that owns or operates environmental data collection platforms for the purpose of collection and transmission of environmental data through the GOES DCS and for which a Federal agency or State or local government has a requirement for or interest in obtaining the data.

§ 911.2 Use of the GOES DCS.

(a) Use of the GOES DCS can be authorized only for the purpose of collecting environmental data. Environmental data as used here means observations and measurements of the physical, chemical or biological properties of the ocean, rivers, lakes, solid earth, and atmosphere (including space).

(b) The GOES DCS is not to be used for data collection where adequate private common carrier communications exist to provide the service. (Adequate is defined in terms of capacity, speed and reliability with respect to the particular use envisioned.) A user must document, with a request for use of the GOES DCS, why private common carrier communications are not adequate.

(c) A user must identify the Federal agency or State or local government which will benefit from the proposed collection of data. NOAA will confirm with the sponsoring Federal agency, or State or local government, that the data are required by, in support of or in furtherance of, a program conducted by the sponsoring agency or State or local government.

(d) User agencies and organizations will be admitted to system use with priority status as follows:

(1) NOAA users or users whose data are required for implementation of NOAA programs.

(2) Users whose data are desired to support NOAA programs.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the United States Government.

(4) Users whose data are required by a State or local government of the United States. No other users will be admitted to system use.

(e) All users of the GOES DCS must use a data collection platform radio set whose technical characteristics conform to specifications established by NOAA. The message format must be as specified by NOAA.

(f) All users are responsible for all costs associated with the procurement and operation of the platforms, any confidential treatment of data under § 911.3, and for the acquisition of the data from those platforms either directly from the satellite or from the NOAA GOES Data Collection Center at the World Weather Building in Suitland, Maryland.

(g) Design characteristics of the environmental data collection system on the spacecraft require that users conform to technical standards established by NOAA. See § 911.5 of this part.

(h) NOAA will make every effort to maintain the GOES DCS in full operation at all times subject to the availability of appropriations. NOAA will bear no responsibility for any losses as a result of the nonavailability of the DCS.

§ 911.3 Treatment of data.

(a) All users of the GOES DCS must agree to permit NOAA and other agencies of the United States Government the free and open use of all data collected from their platforms, except as otherwise provided for in paragraphs (b) through (f) of this section, and to provide NOAA with the necessary information on data formats to facilitate such use.

(b) NOAA will consider a request from a user, who has otherwise met the criteria of § 911.2, for proprietary treatment by NOAA of all or a portion of the data collected from the platforms owned by the user. Each request for proprietary treatment must:

(1) Specifically identify the exact portion(s) of the data claimed to be confidential;

(2) State whether the data claimed to be confidential is commonly known within the user's industry or activity or is readily ascertainable by outside persons with a minimum of time and effort;

(3) State how release of the data would be likely to cause substantial harm to the user's competitive position;

(4) Identify the Federal agency or governmental program which would benefit by gaining access to the data to be collected;

(5) State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned; and

(6) State when the confidential data may be made public.

(c)(1) NOAA may treat environmental data obtained by the GOES DCS as proprietary if the Assistant Administrator for Satellites, with the advice of the General Counsel and other interested Federal officers, finds that:

(i) The data are trade secrets or commercial information obtained from a user and privileged or confidential; and

(ii) Use of the GOES DCS for collection and proprietary treatment of such data is in the public interest. Proprietary treatment of data which are required to protect life or property will be deemed not to be in the public interest.

(2) All data for which the Assistant Administrator grants proprietary treatment shall not be publicly disclosed in individually identifiable form without the user's authorization, except in accordance with the procedures set forth in paragraph (f) of this section or pursuant to the order of a court of competent jurisdiction. Such data may be combined and publicly disclosed in such formats as general statistical studies, environmental warnings and forecasts, or aggregated reports or summaries in which the identity of the user(s) furnishing such information or the confidential portions of the data shall not be disclosed.

(d)(1) The assistant Administrator for Satellites shall notify the user in writing whether all or a portion of the data will be treated as proprietary and shall state the reasons for the decision. The user may appeal the initial decision of the Assistant Administrator by filing a notice of appeal, including supporting information, with the Administrator of NOAA, Department of Commerce, Washington, DC 20230, within 30 days (excluding Saturdays, Sundays and legal holidays) of receipt of notice.

(2) The Administrator may decide the appeal on the basis of the information already submitted or may request additional information from the user. The decision of the Administrator shall state the reasons for the decision, and shall become effective upon issuance.

(e) The Assistant Administrator for Satellites, after consultation with other interested NOAA officers, shall institute a control system to protect the confidentiality of data that have been granted proprietary treatment under this section and are in the possession of NOAA. The control system will provide for safeguarding the data and ensuring that only authorized officers and employees have access to the data for official purposes.

(f) Data that have been accorded proprietary treatment for which NOAA or another Federal agency has no present requirement may be returned to the possession of the user and kept by the user until such time as NOAA or another Federal agency has a present requirement for the data at which time the data shall be made available to NOAA or to another Federal agency in accordance with the terms of a mutually acceptable agreement.

(g)(1) All requests from any person(s) for data granted proprietary treatment under this section shall be processed consistent with NOAA Freedom of Information Act (FOIA) Regulations (15 CFR Part 903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14 and 15 CFR Part 4.

(2) The user shall be notified within five days (excluding Saturdays, Sundays, and legal public holidays) of receipt by NOAA of an FOIA request for disclosure of data which otherwise have been granted proprietary treatment under this section. The user may submit written objections to release of the data, together with any supporting information, to the Assistant Administrator for Satellites, within five days (excluding Saturdays, Sundays and legal public holidays) of receipt of notice. The failure to object within the prescribed time limit will be considered an acknowledgment that the user does not wish to claim exempt status under the FOIA.

(3) If data which have been granted proprietary treatment under this section are found to be disclosable, in whole or in part, under the FOIA, the user submitting the data will be notified in writing and given five days (excluding Saturdays, Sundays, and legal holidays) from receipt of the notice to seek judicial relief.

§ 911.4 Continuation of GOES-DCS.

(a) NOAA expects to continue to operate a geostationary satellite data collection system while it operates GOES satellites, subject to the availability of future appropriations.

(b) As use of the system in support of NOAA programs increases, it eventually may be necessary to restrict the use by other users. If a use restriction should become necessary, or in the event that NOAA discontinues operation of GOES, NOAA will provide, to the maximum extent possible, advance notice to the affected users.

§ 911.5 GOES-DCS Use Agreements.

(a) Each user must have an agreement with NOAA to use the GOES DCS.

(b) These agreements will cover, but will not be limited to: (1) The period of time the agreement is valid and procedures for cancelling it, (2) conformance with ITU agreements and regulations, (3) required equipment standards, (4) standards of operation, (5) priorities for use, (6) reporting time and frequencies, (7) data formats, (8) data delivery systems and schedules, (9) user-borne costs, and (10) proprietary treatment of data under § 911.3.

(c) The representative of NOAA for evaluating use requests and concluding use agreements will be the Director of Data Services for the National Earth Satellite Service, except that in the case of agreements which involve foreign government agencies or requsts for proprietary treatment of data, the concurrence of the Assistant Administrator for Satellites will be obtained.

PART 916—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Subpart A—General

Sec.
916.1 Purpose.
916.2 Adjudication of claims.
916.3 Scope.
916.4 Applicability.
916.5 Definition of terms.
916.6 Notice of displacement.
916.7 Eligibility requirements.
916.8 Extension of eligibility.
916.9 Relocation costs treated separately from purchase price of real property acquired under Federal law.
916.10 Filing applications for benefits.
916.11 Time limitation for filing applications for benefits.
916.12 Payments not to be considered as income.
916.13 Multiple occupancy.
916.14 Effects upon property acquisition.
916.15 Withholding from relocation payments.
916.16 Office procedures.
Sec.

Subpart B—Uniform Real Property Acquisition Policy

916.20 Applicability.
916.21 Objectives.
916.22 Acquisition policy.
916.23 Statement of just compensation to owner.
916.24 Acquisition of improvements required to be removed from land acquired.
916.25 Appraisal.
916.26 Condemnation.
916.27 Uneconomical remnant.
916.28 Notice to move.
916.29 Temporary occupancy of property after acquisition.
916.30 Expenses incidental to transfer of title.
916.31 Notice to occupants upon initiation of negotiations.
916.32 State acting as agent for Federal programs.
916.33 Federally assisted programs.

Subpart C—Relocation Assistance Advisory Services

916.40 Relocation assistance advisory program.
916.41 Organizational requirements.
916.42 Relocation plan.
916.43 Coordination of planned relocation activities.
916.44 Local coordination.
916.45 Coordination with project work.
916.46 Public information.
916.47 Contracting for relocation services.
916.48 Agreements with central relocation agency.
916.49 Contracting with private concerns.
916.50 Additional sources of advisory services.
916.51 Relocation services—federally assisted programs.
916.52 Displaced person declining to accept relocation services.

Subpart D—Assurance of Adequate Replacement Housing Prior to Displacement

916.60 Determination of availability of replacement housing.
916.61 Housing provided as last resort.
916.62 Loans for planning and other preliminary expenses for additional housing.

Subpart E—Moving and Related Expenses

916.65 Eligibility.
916.66 Payment for moving expenses.
916.67 Allowable moving expenses.
916.68 Nonallowable moving expenses and losses.

Sec.
916.69 Payment for expenses incurred in searching for replacement business or farm.
916.70 Limitation.
916.71 Actual direct losses by business or farm operation.

Subpart F—Payments in Lieu of Moving and Related Expenses

916.75 Eligibility.
916.76 Displaced dwelling occupant.
916.77 Moving allowance schedules.
916.78 Displaced farm operation.
916.79 Farms—partial taking.
916.80 Displaced business.
916.81 Determination of loss of existing patronage to a business.
916.82 Businesses not eligible to receive "in lieu" payment.
916.83 Displaced nonprofit organizations.
916.84 Average annual net earnings.

Subpart G—Replacement Housing Payment for Homeowners

916.87 Eligibility.
916.88 Owner-occupant of less than 180 days.
916.89 Elements included in replacement housing payment.
916.90 Computation of replacement housing payment.
916.91 Differential payment for replacement housing.
916.92 Interest payment.
916.93 Incidental expenses.
916.94 Statement of eligibility pending purchase of replacement dwelling.
916.95 Advance payment in condemnation cases.

Subpart H—Replacement Housing Payment for Tenants and Certain Others

916.98 Eligibility requirements.
916.99 Notification to tenants.
916.100 Replacement housing payment.
916.101 Computation of replacement housing rental differential payment for tenants and certain others.
916.102 Computation of replacement housing payment—purchasers.
916.103 Disbursement of rental replacement housing differential payment.

Subpart I—Federally Assisted Programs

916.106 Acceptance of real property furnished by a State incident to NOAA program.
916.107 Assurances—section 210.
916.108 Assurances—section 305.
916.109 Compliance with section 210.
916.110 Compliance with sections 301 and 302.
Sec.
916.111 Inability to provide assurances under section 305.
916.112 Assurances not required.
916.113 Monitoring assurances.
916.114 Federal share of costs.
916.115 Relocation assistance programs.
916.116 Waiving of benefits.
916.117 Appeal procedures.

Subpart J—Administrative Review and Appeals

916.120 Compliance review.
916.121 Appeals.
916.122 Appeals procedure.

Subpart K—Annual Report

916.125 General.
916.126 Narrative report.
916.127 Statistical report.
916.128 Submission.

AUTHORITY: 5 U.S.C. 301, and sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).

SOURCE: 41 FR 41408, Sept. 22, 1976, unless otherwise noted.

Subpart A—General

§ 916.1 Purpose.

These regulations prescribe policies and procedures to insure the fair, equitable, and uniform treatment of persons displaced by Federal and federally assisted programs. They implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereinafter referred to as the Act, and General Services Administration Guidelines, Federal Management Circular (FMC) 74-8, October 4, 1974. All references in these regulations to sections or subsections are references to sections or subsections of the Act unless otherwise noted.

§ 916.2 Adjudication of claims.

Any claims made under these regulations and the Act shall be adjudicated on the basis of the regulations in effect when the claim was filed.

§ 916.3 Scope.

The regulations in this part apply to the programs of all Offices of the National Oceanic and Atmospheric Administration (NOAA). The geographical coverage includes the fifty (50)

States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and any political subdivision thereof.

§ 916.4 Applicability.

The provisions of the Act and the regulations in this part apply to the acquisition of all real property for, and the relocation of all persons displaced by, NOAA programs and projects and programs and projects undertaken by State agencies which receive Federal financial assistance from NOAA for all or a part of the cost thereof. The Act and these regulations apply regardless of whether the real property is acquired by NOAA or a State agency or whether Federal funds actually contributed to the cost of the real property acquired for a federally assisted project.

§ 916.5 Definition of terms.

The terms used in this part shall have the meanings set forth in this section. Heads of Offices may expand these definitions to provide greater clarity and successful implementation of assigned programs. Any such expansion, however, shall not result in a deviation in concept from the definitions set forth herein.

(a) *The Act.* "The Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), approved January 2, 1971.

(b) *Business.* Any lawful activity, except a farm operation, conducted primarily:

(1) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization ; or

(4) Solely for the purposes of section 202(a) of the Act (see Subpart E of this part) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(c) *Comparable replacement dwelling.* For the purposes of rendering relocation assistance by making referrals for replacement housing and for computation of the replacement housing payment, a comparable replacement dwelling is one which is decent, safe, and sanitary and:

(1) Functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(2) Adequate in size to meet the needs of the displaced family or individual. However, at the option of the displaced person, a replacement dwelling may exceed his/her needs when the replacement dwelling has the same number of rooms or the equivlent square footage as the dwelling from which he/she was displaced.

(3) Open to all persons regardless of race, color, religion, national origin, sex, or marital status, consistent with the requirement of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 and other applicable laws.

(4) Located in an area not generally less desirable than the one in which the acquired dwelling is located with respect to:

(i) Neighborhood conditions, including but not limited to municipal services and adverse environmental factors,

(ii) Public utilities, and

(iii) Public and commercial facilities.

(5) Reasonably accessible to the displaced person's place of employment or potential place of employment.

(6) Within the financial means of the displaced family or individual, and

(7) Available on the market to the displaced person.

NOTE: If housing meeting the requirements of the above definition is not available on the market, the head of a displacing agency may, upon a proper finding of the need therefor, consider available housing exceeding that basic criteria.

(d) *Decent, safe, and sanitary housing.* A decent, safe, and sanitary dwelling is one which is found to be in sound, clean, and weathertight condition, and which meets local housing codes. Offices shall be governed by the following criteria in determining if a dwelling unit is decent, safe, and sanitary. Adjustments may only be made in the case of unusual circumstances or in unique geographical areas, as determined by the head of the office.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink, a cooking stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bath and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping unit.* A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the head of the Office.

(3) *Water.* Has a continuing and adequate supply of potable safe water.

(4) *Egress.* Each building used for dwelling purposes shall have a safe means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In multidwelling buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(5) *Occupancy standards.* Occupancy standards for replacement housing shall comply with Office approved occupancy requirements or comply with local codes.

(6) *Absence or inadequacy of local standards.* In those instances where there is no local housing code or a local housing code does not contain minimum standards or the standards are inadequate, the head of the Office may establish the standards.

(e) *Displaced person.* Any person who, on or after the effective date of the Act, moves from real property, or moves his/her personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by any Office of the National Oceanic and Atmospheric Administration or with Federal financial assistance; and solely for the purposes of sections 202 (a) and (b) and 205 of the Act, as a result of the acquisition of or as the result of the written order of the acquiring Office to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(f) *Displacing agency.* An Office in the case of a direct Federal project, or a State agency, as defined in the Act, in the case of a project receiving Federal financial assistance.

(g) *Dwelling.* The place of permanent or customary and usual abode of a person. It includes a single family building; a one-family unit in a multifamily building; a unit of a condominium, or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost. For the purpose of sections 203 and 204 of the Act the term "dwelling" shall mean the place of permanent abode of a person and does not include seasonal or part-time dwelling units, such as beach houses, mountain, or other vacation cabins.

(h) *Economic rent.* The amount of rent a displaced tenant would have had to pay for a comparable dwelling unit in an area similar to the neighborhood in which the dwelling unit being acquired is located.

(i) *Family.* Two or more individuals who are related by blood, adoption, marriage, legal guardianship, or operation of law who live together as a family unit. However, upon appropriate determination by the head of the Office, others who live together as a family unit may be treated as if they were a family for the purpose of determining benefits under title II of the Act.

(j) *Farm operation.* Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(k) *Federal agency.* Any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(l) *Federal financial assistance.* A grant, loan, property, or other contribution provided by the United States, except any insurance or guarantee contracts and any annual payment or capital loan to the District of Columbia.

(m) *Financial means.* For the purpose of determining "financial means" of families and individuals in accordance with section 205(c)(3) of the Act, a determination should be made as to the displaced person's ability to afford the replacement dwelling. In making this determination, the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by public agencies. Offices may issue regulations providing for determinations that 25 percent of monthly gross income for housing costs or the present ratio of housing payment to the individual income is or is not excessive to the other needs of the displaced family or individuals, such as food, clothing, child care, medical expenses, etc. In these cases, the head of the Office shall establish criteria for determining the financial means of the displaced family or individual.

(n) *Initiation of negotiations.* The date the Office makes the first personal contact with the owner of real property to be acquired (or his/her representative) and furnishes him/her with a written offer to purchase real property. Registered mail may be used in lieu of personal contact only where the head of the Office determines that such means is justified by geographic location and/or scale of negotiations.

(o) *Mortgage.* Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(p) *Owner.* A person who holds fee title, a life estate, a 99-year lease or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estate or interest, or who is possessed of such other proprietory interest in the property acquired as, in the judgment of the head of the Office, warrants consideration as ownership. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

(q) *Person.* Any individual, partnership, corporation, or association.

(r) *State.* Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(s) *State agency.* The National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a State or States.

(t) *Available replacement housing.* The terms "available replacement housing" or "made available", shall mean that the displaced person has either, by him/herself obtained and has the right of possession of comparable replacement housing, or the Office has offered him/her comparable replacement housing as defined in paragraph (d) of this section, which is available for immediate occupancy.

(u) *Nonprofit organization.* A corporation, partnership, individual, or other public or private entity, engaged in a business, professional or instructional activity on a non-profit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, professional, or institutional activity on the premises.

(v) *Offices.* The various offices and divisions of the National Oceanic and Atmospheric Administration.

(w) *Heads of offices.* The head of each office referred to in paragraph (v) of this section or his/her designee.

§ 916.6 Notice of displacement.

National Oceanic and Atmospheric Administration officials responsible for the administration of programs affected by the Act must ensure that a written notice of displacement is given to each individual, family, business, or farm operation to be displaced at least 90 days in advance of the date by which a move is required. Such notice shall be served personally or by certified (or registered) first-class mail. In the case of a federally assisted program, the State agency is responsible for ensuring that such notice is given.

§ 916.7 Eligibility requirements.

To be eligible for benefits under title II of the Act as a displaced person, either of the following conditions must be fulfilled:

(a) The person must have moved (or moved his/her personal property) as a result of the receipt of a written notice to vacate which notice may have been given before or after initiation of negotiations for acquisition of the property; or

(b) The subject real property must, in fact, have been acquired, and the person must have moved as a result of its acquisition (except in those instances covered by sections 217 and 219 of the Act).

(c) All persons contacted by the negotiating Office shall be advised that the benefits of the Act are not available to (1) persons who move prior to the initiation of negotiations if they have not received a notice to vacate the property, or (2) to persons who move subsequent to the initiation of negotiations when the Office does not acquire the property or does not issue a notice to vacate the property.

§ 916.8 Extension of eligibility.

In addition to the basic eligibility requirements specified in § 916.7, certain of the benefits provided by Title II of the Act are available as follows:

(a) Whenever the acquisition of, or notice to move from, real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move his personal property from such other real property, such person is entitled to the benefits provided by sections 202(a), 202(b), and 205 of the Act.

(b) When the head of the displacing agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he/she may offer such person relocation advisory services pursuant to section 205(c) of the Act.

§ 916.9 Relocation costs treated separately from purchase price of real property acquired under Federal law.

Contracts or options to purchase real property under Federal law shall not incorporate provisions for making payments for relocation costs and related items in title II of the Act.

(a) Appraisers shall not give consideration to or include in their real property appraisals any allowances for the benefits provided by title II and section 303 of the Act.

(b) In the event of condemnation with a declaration of taking, the estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II of the Act.

§ 916.10 Filing applications for benefits.

All applications for benefits under the Act by a displaced person shall be submitted to the displacing agency and be supported by such documentation as is required by the regulations in this part. Offices shall make every effort to pay promptly any displaced person who makes application for authorized payments and may authorize advance payments in hardship cases. In the case of a project or program undertaken with Federal financial assistance, all applications shall be submitted to the State agency and be supported by such documentation as may be required by the State.

§ 916.11 Time limitation for filing applications for benefits.

Applications for benefits shall be made within eighteen (18) months from the date on which the displaced person moves from the real property acquired or to be acquired or the date on which the displacing agency makes final payment of all costs of that real property, whichever is the later date. The head of the Office may extend this period upon a proper showing of good cause.

§ 916.12 Payments not to be considered as income.

Offices shall advise all displaced persons that no payment received under title II of the Act shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 916.13 Multiple occupancy.

Where two or more individuals, not families, living together in a single family dwelling are displaced from such dwelling, they shall be treated as one displaced person for purposes of entitlements for replacement housing benefits under sections 203 and 204 of the Act. However, each individual displaced may receive a payment for actual reasonable moving expenses as authorized under section 202(a) of the Act, and in the case of families, each family shall be considered separately.

§ 916.14 Effects upon property acquisition.

(a) Nothing in the regulations in this part shall be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of value or of damage not in existence immediately prior to January 2, 1971.

(b) The provisions of section 301 of the Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

§ 916.15 Withholding from relocation payments.

To insure equitable treatment, no displaced person is to have a relocation payment withheld or amounts deducted therefrom (including closings in escrow) to satisfy claims or obligations to others, including the acquiring agency. Moving costs and relocation payments are intended to lessen the impact of the forced relocation and to permit satisfactory relocation into decent, safe, and sanitary housing. Other legal remedies are available to the displacing Office to satisfy the displacee's credit obligations rather than withholding amounts from relocation payments.

§ 916.16 Office procedures.

The head of each Office shall issue such procedural instructions, not inconsistent with the provisions of this Part 916, as he deems necessary to assure proper implementation and administration of the Act and these regulations.

Subpart B—Uniform Real Property Acquisition Policy

§ 916.20 Applicability.

This subpart prescribes policies and procedures governing the acquisition of real property for Federal and federally assisted programs administered by the National Oceanic and Atmospheric Administration.

§ 916.21 Objectives.

The objectives of the policies and procedures set forth in this subpart are to:

(a) Encourage and expedite the acquisition of real property by agreements with owners;

(b) Avoid litigation and relieve congestion in the courts;

(c) Assure consistent treatment for owners in the many NOAA programs and federally assisted programs administered by NOAA; and

(d) Promote public confidence in land acquisition practices.

§ 916.22 Acquisition policy.

To achieve the objectives set out in § 916.21, offices shall, to the greatest extent practicable:

(a) Make every reasonable effort to acquire real property expeditiously by negotiation;

(b) Appraise real property prior to the initiation of negotiations;

(c) Give the owner or his/her designated representative an opportunity to accompany the appraiser during his/her inspection of the property; and

(d) Establish, prior to initiation of negotiations, an amount which is believed to be just compensation for the real property and make a prompt offer to acquire the property for the full amount so established.

(1) In no case will the amount established as just compensation be less than the approved appraisal of the estimated fair market value of the property.

(2) Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement or project for which the property is acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

§ 916.23 Statement of just compensation to owner.

Offices shall provide the owner of real property to be acquired with a written statement of, and a summary of the basis for, the amount established as just compensation. In the case of a partial taking, damages to the remaining real property, if any, shall be separately stated. The summary statement shall include the following:

(a) Identification of the real property and the estate or interest therein to be acquired;

(b) Identification of the buildings, structures, and other improvements considered to be part of the real property for which the offer of just compensation is made;

(c) A statement explaining the basis for the determination of just compensation and that such determination:

(1) Is based on the estimated fair market value of the estate or interest which is to be acquired on the property;

(2) Is not less than the approved appraisal of the estate or interest in the property;

(d) A statement that any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement or project for which the property is to be acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded by the Office in making its determination of just compensation for the property.

§ 916.24 Acquisition of improvements required to be removed from land acquired.

Whenever an Office acquires any interest in real property it shall acquire at least an equal interest in all buildings, structures, or other improvements located thereon and which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property will be put.

(a) If any buildings, structures, or other improvements, required to be acquired in accordance with this section, are the property of a tenant who has the right or obligation to remove them at the expiration of his term, the total just compensation for the real property, including the property of the tenant, shall be apportioned to the landowner and the tenant. The amount payable to the tenant for such improvements will be the greater of:

(1) The estimated fair market value of the property for offsite removal (salvage value), or

(2) The contributive value of the tenant's improvements to the value of the entirety which shall not be less than the approved appraisal of the value of the improvements.

(b) A payment may be made under paragraph (a) of this section, only in those cases where:

(1) The landowner disclaims all interests in the tenant's improvements, and

(2) The tenant, in consideration for such payment, assigns, transfers, and releases to the acquiring agency all his/her right, title, and interest in and to the improvements.

(c) A tenant may reject payment under paragraph (a) of this section and elect to obtain payment in accordance with other applicable laws.

(d) Payment under paragraph (a) of this section shall not duplicate any payment otherwise authorized by law.

§ 916.25 Appraisal.

As a general rule, only one appraisal will be obtained on each tract, unless the Office determines that circumstances require an additional appraisal or appraisals.

(a) Real property acquisition records shall show that the owner or his/her designated representative has been given an opportunity to accompany the appraiser during his/her inspection of the property.

(b) The head of each Office shall establish, for all NOAA programs and federally assisted programs under his jurisdiction, criteria for determining the qualifications of appraisers, and a system of review by qualified appraisers. Such criteria and system shall be consistent with any standards or procedures established by the Director of the Office of Administrative Services, Department of Commerce, pursuant to section 5.01 of Department Administrative Order 217-13 (March 7, 1973) or any revisions thereof.

(c) Standards for appraisals used in NOAA programs and federally assisted programs administered by NOAA shall be consistent with the current uniform appraisal standards for Federal land acquisition published by the Interagency Land Acquisition Conference.

§ 916.26 Condemnation.

Condemnation proceedings, where required, will be instituted by the Office. Offices shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his/her property.

(a) Offices in project planning shall take into consideration the possible liability for the payment of litigation expenses of a condemnee provided in section 304 of the Act.

(b) In no case will an Office, in order to compel an owner to agree to a price to be paid for his property:

(1) Advance the time of condemnation;

(2) Defer negotiations or condemnation or the deposit of funds in court for the use of the owner; or

(3) Take any other coercive actions to force a price agreement.

§ 916.27 Uneconomical remnant.

In any case where acquisition of only part of a property will leave the owner with an uneconomical remnant, the acquiring Office shall offer to acquire the entire property.

§ 916.28 Notice to move.

No owner or tenant who will become a displaced person will be required to surrender possession of his property before payment is made to him or deposited in the registry of the court. In all cases the owner or tenant shall be given at least 90 days' written notice of the date by which he is required to move from the acquired property.

§ 916.29 Temporary occupancy of property after acquisition.

If an owner or tenant is permitted to remain in possession of property for a short period after acquisition, the rental charged for such occupancy shall not be more than the fair rental value of the property to a short-term occupier.

§ 916.30 Expenses incidental to transfer of title.

Offices shall take actions necessary to insure that owners are reimbursed for expenses incurred incidental to conveyance of real property by the earliest date practicable. All Office land purchase contract forms shall be amended to provide reimbursement to the vendor in an amount deemed by the Office to be fair and reasonable for the following:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property;

(b) Penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith encumbering said real property; and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

§ 916.31 Notice to occupants upon initiation of negotiations.

The following information shall be furnished occupants of real property to be acquired at the time of initiation of negotiations, either in a brochure or such other medium as may be directed by the head of the Office:

(a) Owner-occupants of not less than 180 days. Simultaneous with the fair market value offer, an owner-occupant of not less than 180 days shall be furnished:

(1) An explanation of his/her eligibility to receive a replacement housing payment not to exceed $15,000 and the manner in which the exact amount to which he/she will be entitled will be computed, and

(2) An explanation of the eligibility requirements to receive payments for replacement housing, increased interest costs, and incidental expenses, and of his option to rent replacement housing.

(b) Owner-occupants of 90 days or more, but less than 180 days. Simultaneous with the fair market value offer, an owner occupant of 90 days or more, but less than 180 days, shall be furnished.

(1) An explanation of his/her eligibility to receive a replacement housing payment not to exceed $4,000 and the manner in which the exact amount to which he/she will be entitled will be computed, and

(2) An explanation of the option to receive a downpayment towards the purchase of replacement housing not to exceed $4,000, and incidental expenses to purchase replacement housing and the requirement therefor.

(c) Tenants of 90 days or more. Within 15 days after the initiation of negotiations for the purchase of real property, each tenant of 90 days or more shall be personally contacted and furnished in writing:

(1) The date of initiation of negotiations for purchase of the real property;

(2) An explanation of his/her eligibility to receive a replacement housing payment not to exceed $4,000 and the manner in which the exact amount to which he will be entitled will be computed, and

(3) An explanation of the option to receive a down payment towards the purchase of replacement housing and incidental expenses, including the matching requirements therefor.

(d) Owners and tenants of less than 90 days. Within 15 days after the initiation of negotiations for acquisition of the property, each owner and tenant of less than 90 days shall be personally contacted and furnished in writing:

(1) The date of initiation of negotiations for purchase of the real property; and

(2) An explanation of his/her eligibility to receive a payment for moving expenses.

§ 916.32 State acting as agent for Federal program.

In the event that real property is acquired by a State agency at the request of the Office for a NOAA program or project, such acquisition shall, for purposes of the Act, be deemed an acquisition by the Office administering such program or project.

§ 916.33 Federally assisted programs.

The head of each Office administering federally assisted programs carried out by State agencies which will result in the acquisition of real property shall require that State agencies:

(a) Reimburse owners for necessary expenses as specified in sections 303 and 304 of the Act, and

(b) Comply with the provisions of sections 301 and 302 of the Act if compliance is legally possible under State law.

Subpart C—Relocation Assistance Advisory Services

§ 916.40 Relocation assistance advisory program.

Whenever the acquisition of real property for a program or project undertaken by an Office will result in the displacement of any person, the Office shall establish a relocation assistance advisory program for the displaced person or persons. If the head of the Office determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition he/she may offer such person relocation advisory services under this program. Where a federally assisted project is involved in the displacement, the State agency shall provide the advisory services. Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate to:

(a) Determine the need, if any, of displaced persons, for relocation assistance;

(b) Provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing and of comparable commercial properties and locations for displaced businesses;

(c) Insure the availability of adequate replacement housing prior to displacement as prescribed in Subpart D of this part;

(d) Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(e) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons;

(f) Provide assistance to displaced persons in completing the application forms for benefits under the Act; and

(g) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

§ 916.41 Organizational requirements.

The head of each Office engaged in programs which cause the displacement of persons shall insure that responsibility for administration of relocation assistance programs is properly assigned in accordance with the following:

(a) *Headquarters office.* An official at the Office headquarters level shall be assigned responsibility for providing staff guidance and direction for administration of the Office's relocation programs.

(b) *Regional or comparable office level.* At least one official in each region, area, or state office where relocation occurs, shall be assigned the responsibility for providing relocation assistance. These officials may be responsible for one or more projects within the region or other geographical area where practicable and appropriate.

(c) *Local relocation office.* A local relocation office, properly staffed, should be established when it is determined that the volume of work or the needs of the displaced persons justify such an office. The determination to establish a local relocation office may be made only by the head of the Office on an individual project basis. Local relocation offices, when established, should be reasonably accessible to public transportation or within walking distance of the project and should be open during hours convenient to the persons being displaced.

§ 916.42 Relocation plan.

A relocation plan shall be developed for all areas or projects where land acquisition activities will cause displacement of persons from their dwellings, businesses, or farm operations. The plan shall be developed in accordance with procedures outlined in § 916.60.

(a) The plan shall include the following information, as a minimum:

(1) The estimated number of individuals, families, businesses, farms, and nonprofit organizations which are to be relocated;

(2) The availability of decent, safe, and sanitary replacement housing within the financial means of the individuals and families being displaced;

(3) The estimated total cost of payments to displaced persons for all benefits under the Act for replacement housing; and

(4) The estimated cost of administering required relocation services to displaced persons.

(b) Each relocation plan shall be:

(1) Coordinated with other Federal, State, and local agencies and private concerns having relocation programs within the project area, to ensure that the real estate market from which replacement housing will be obtained is capable of supplying the demands of all users of housing. (See also §§ 916.43 and 916.44); and

(2) Updated periodically to reflect current real estate conditions. When funds have been appropriated for commencement of real property acquisitions, the relocation plan will be continuously updated and serve as a basis for accomplishing required relocation activities.

(c) A more elaborate relocation plan may be required in instances where acquisition of real property for a program or project will result in the displacement of a substantial number of persons in a metropolitan area, particularly where low or moderate income persons are involved. In any such instances, Offices shall be guided by the relocation planning instructions promulgated by the Department of Housing and Urban Development in its Relocation Handbook 1371.1.

§ 916.43 Coordination of planned relocation activities.

Where two or more Offices of the National Oceanic and Atmospheric Administration plan displacement activities in a given community or project area, they shall coordinate such plans to insure the adequacy of available replacement housing and that displaced persons receive the maximum assistance available to them. Similarly Offices shall communicate with other Federal agencies, and State and local agencies, contemplating displacement activities in the community or area for the purpose of planning relocation activities and coordinating available housing resources. As a minimum, Offices causing displacement shall:

(a) Consult with the appropriate field office of the Department of Housing and Urban Development within the jurisdictional area concerning the availability of housing;

(b) Provide the Housing and Urban Development field office with information regarding the projects which will cause displacement; and

(c) Designate at least one representative who will meet periodically with representatives of other NOAA Offices and other Federal agencies causing displacement in the community to review the impact of their respective programs on the community or area.

§ 916.44 Local coordination.

To further insure maximum coordination of relocation activities in a given community or area, the displacing agency shall consult appropriate local officials prior to approving any proposed project in the community, consistent with the requirements promulgated by Office of Management and Budget Circular No. A-95 (Revised). The circular provides a central point of identifying local officials.

§ 916.45 Coordination with project work.

Offices shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

§ 916.46 Public information.

The head of each Office shall insure that the public receives adequate knowledge of the Office's relocation programs and that persons to be displaced are fully informed, at the earliest possible time, concerning relocation plans. In those areas where the number of persons to be displaced is such that it is not feasible to provide such information on a personal basis, the Office shall afford all concerned persons an opportunity to discuss the relocation program at public meetings. Brochures describing the relocation program will be distributed at these meetings and to all other indivduals and organizations, as appropriate.

(a) Discussions at public meetings shall include, as a minimum, the following:

(1) The availability of relocation assistance and services, eligibility requirements, and payment procedures;

(2) The estimated number of individuals, families, businesses, farm operations and nonprofit organizations to be relocated;

(3) Specific plans for relocating all eligible displaced persons in suitable replacement housing; and

(4) The right of administrative review by the head of the Office and of appeal to the Administrator of the National Oceanic and Atmospheric Administration, as provided in Subpart J of this part.

(b) Where appropriate, Offices will, within 15 days after initiation of negotiations on a project, provide public announcements concerning:

(1) The relocation services to be provided;

(2) The payments which can be made; and

(3) The location where the Office relocation brochures can be obtained.

(c) Public announcements may utilize any type of mass media which will provide full and adequate notice to the public.

§ 916.47 Contracting for relocation services.

Offices may enter into agreements with any Federal, State, or local agency, or contracts with private individuals or concerns for the purpose of carrying out relocation activities as provided in §§ 916.48 and 916.49. Each such agreement or contract shall require specific performance standards for the services to be provided. Any contract for such services must be executed and administered in conformance with NOAA Procurement Regulations.

§ 916.48 Agreements with central relocation agency.

When a central relocation agency is available in the community or project area, the displacing agency shall consider entering into an agreement with such agency in an effort to reduce costs, prevent duplication, and promote uniform and effective administration of relocation assistance programs for displaced persons. The appropriate Regional/Area Office of the Department of Housing and Urban Development will provide information and assistance concerning these services, upon request.

§ 916.49 Contracting with private concerns.

Offices may provide relocation services through contracts with private individuals or concerns only when the following conditions exist:

(a) A central relocation agency is not available in the community or project area, or a central agency is available but does not have the capacity to provide the necessary services within the time required by the Office's program, and

(b) The Office does not have the inhouse capability to provide the services.

§ 916.50 Additional sources of advisory services.

The following additional sources of advisory services may be available in the project area and should be considered and utilized whenever practicable:

(a) *Veterans Administration (VA).* The Veterans Administration maintains a housing counseling service and a displaced persons priority program for providing VA owned housing to displaced persons. These services may be made available to persons displaced by NOAA programs and federally assisted programs administered by NOAA, and the local VA Loan Guarantee Office should be contacted.

(b) *Small Business Administration.* The Small Business Administration provides technical and loan counseling services for small businesses. A displaced businessman should be advised of these services.

(c) *Department of Agriculture.* The Department of Agriculture provides many services through its direct action farmer assistance programs, activities in rural nonfarm communities, and also urban communities of under 10,000 population. Coordination with the Farmers Home Administration, Department of Agriculture is recommended when a farm operation is displaced.

(d) *Local governmental organizations.* Local governmental organizations and agencies may have rent supplement, public housing, or related relocation assistance programs which may be utilized to provide housing for the occupants displaced from a project. Local programs should be utilized where they exist. The use of local non-governmental associations may also be used in helping a displaced person. Local real estate boards, apartment owners associations, home builders associations, and other organizations may provide information and services that will help obtain comparable replacement housing for displaced persons and suitable replacement sites for displaced businesses. Also, many States have veterans' organizations which offer services to veterans. The availability of such State organizations should be ascertained and utilized.

§ 916.51 Relocation services—federally assisted programs.

State agencies receiving Federal financial assistance on a project may enter into agreements or contracts for the provision of relocation services in accordance with this Subpart C. When a State agency elects to contract for these services, the Office providing the Federal financial assistance shall take such action as is necessary to insure that the contract will facilitate a uniform and effective relocation program for the displaced persons. Any such contract shall include the following provisions, as a minimum:

(a) That payments or services shall be provided in accordance with the regulations in this Part 916;

(b) That records pertinent to the contract will be retained by the State agency for a period of at least 3 years and shall be available for examination by representatives of the Office and the General Accounting Office;

(c) Clauses required by regulations implementing Title VI of the Civil Rights Act of 1964 (Pub. L. 88-353); and

(d) Any other provision as required by the Office administering the federally assisted program or project.

§ 916.52 Displaced person declining to accept relocation services.

A displaced person is not required to accept the relocation services provided for his/her benefit. He/she may choose to relocate on his/her own and still be eligible for payments under the Act. However, the displaced person must meet the occupancy requirements for decent, safe, and sanitary housing and make application within the prescribed time limits to be eligible for a replacement housing payment.

Subpart D—Assurance of Adequate Replacement Housing Prior to Displacement

§ 916.60 Determination of availability of replacement housing.

An Office shall not proceed with any phase of any project or authorize a State agency to proceed with any phase of a project which will cause the displacement of any person until it has determined, or received satisfactory assurances from the displacing State agency that, within a reasonable period of time prior to displacement, decent, safe, and sanitary housing as defined in § 916.5(d) will be available on a basis consistent with the requirements of title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals being displaced. Such dwellings are to be equal in number to the number of, and available to, persons being displaced who require dwellings and reasonably accessible to their places of employment.

(a) *Support.* Determinations or assurances shall be based on a current survey and analysis of available replacement housing by the Office or displacing State agency and shall take into consideration the competing demands on available housing. (See Subpart C of this part.) Information to develop and maintain the survey may be available from the Department of Housing and Urban Development, the

Veterans Administration, and real estate associations. The survey should:

(1) Be undertaken during the planning phase for each project,

(2) Be developed sufficiently to provide a means for determining whether or not the project or area is feasible from the standpoint of assuring that suitable replacement housing will be available to displaced persons and to support assurances that replacement dwellings are available to meet the criteria specified in this section, and

(3) Include a listing of the housing currently available.

(b) *Waiver.* The head of the Office may waive the requirements of this section for assuring the availability of replacement housing only in the case of an emergency or other extraordinary situation where immediate possession of real property is of crucial importance. Each such waiver shall be supported by appropriate findings and a determination of the necessity for the waiver which shall be documented in writing and made a part of the record pertaining to the project in question.

§ 916.61 Housing provided as last resort.

In any case where the survey and analysis of available replacement housing required by § 916.60 discloses that adequate replacement housing is not available and cannot otherwise be made available, the head of the Office may take action or approve action by a State agency to develop replacement housing as authorized by section 206(a) of the Act. Offices taking or approving such action for replacement housing will be guided by the criteria and procedures issued by the Secretary of Housing and Urban Development in 24 CFR Subtitle A, Part 43, Subpart A. A State agency taking such action should comply with the requirements and procedures of the Office which provides the Federal financial assistance.

§ 916.62 Loans for planning and other preliminary expenses for additional housing.

To encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons, the head of the Office may provide loans to eligible borrowers for planning and other preliminary expenses authorized by section 215 of the Act. In implementing this paragraph, Offices will be guided by the criteria and procedures issued by the Secretary of Housing and Urban Development in 24 CFR Subtitle A, Part 43, Subpart B. A State Agency providing such loans should comply with the requirements and procedures of the Office which provides the Federal financial assistance.

Subpart E—Moving and Related Expenses

§ 916.65 Eligibility.

(a) Any displaced person, as defined in § 916.5(e), including one who conducts a business or farm operation, is eligible to receive a payment for moving and related expenses.

(b) A person who lives on his/her business or farm property may be eligible for both:

(1) Moving and related expenses as a dwelling occupant, and

(2) Moving and related expenses with respect to displacement from a business or farm operation.

(c) A displaced owner-occupant of a multifamily rental dwelling may be eligible for both:

(1) Moving and related expenses as a dwelling occupant, and

(2) Moving and related expenses with respect to displacement from a business.

§ 916.66 Payment for moving expenses.

Whenever the acquisition of real property will result in the displacement of any person, business, or farm operation, the displacing agency shall make a payment to such displaced person upon proper application for the following, or the "in lieu" payments authorized in Subpart F of this part.

(a) Actual reasonable expenses in moving himself/herself, his/her family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the displacing agency; and

(c) Actual reasonable expenses in searching for a replacement business or farm operation.

§ 916.67 Allowable moving expenses.

(a) Actual reasonable expenses incurred by the displaced person in moving may be allowed as follows:

(1) Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the displacing agency determines that relocation beyond the 50-mile area is justified.

(2) Packing and unpacking, crating and uncrating of personal property.

(3) Advertising for packing, crating, and transportation when the displacing agency determines that it is necessary.

(4) Storage of personal property for a period generally not to exceed 12 months when the displacing agency determines that storage is necessary in connection with relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, reestablishment of machinery, equipment, appliances, and other items, including modifications as deemed necessary by the Office and reconnection of utilities not acquired as real property.

(7) Property lost, stolen, or damaged (not caused by the fault or neglect of the displaced person, his/her agent or employees) in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other reasonable expenses as may be determined to be allowable by the Office.

(b) Limitations: (1) When the displaced person accomplishes the move himself/herself, the amount of payment shall not exceed the estimated cost of moving commercially, unless the Office determines a greater amount is justified.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the estimated cost of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgment of the Office, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junk yards, stockpiled sand, gravel, minerals, metals, and similar type items of personal property.

(4) If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to or in excess of the in place value of the display, consideration should be given to acquiring such display or displays as a part of the real property.

§ 916.68 Nonallowable moving expenses and losses.

The following expenses shall not be included in the moving expense payment required to be made by § 916.66.

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures or other improvements in which the displaced person reserved ownership, except as otherwise provided by law.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of goodwill.

(f) Loss of profits.

(g) Loss of trained employees.

(h) Personal injury.

(i) Cost of preparing the application for moving and related expenses.

(j) Payment for search cost in connection with locating a replacement dwelling.

(k) Such other items as the Office determines should be excluded.

§ 916.69 Payment for expenses incurred in searching for replacement business or farm.

Actual reasonable expenses incurred by the displaced person in searching for a replacement business or farm may be allowed as follows:

(a) Actual travel costs.

(b) Extra costs for meals and lodging.

(c) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(d) In the discretion of the displacing agency, necessary broker, real estate, or other professional fees to locate a replacement business or farm operation under circumstances prescribed by the Office.

§ 916.70 Limitation.

The total amount which a displaced person may be paid for searching expenses may not exceed $500, unless the Office determines that a greater amount is justified based on the circumstances involved.

§ 916.71 Actual direct losses by business or farm operation.

Whenever the acquisition of or notice to move from, real property used for a business or farm operation causes any person to move from other real property used for his/her dwelling, or to move his/her personal property from such other real property, such person may receive payments for moving and related expenses as provided in § 916.66.

(a) When the displaced person does not move personal property he/she should be required to make a bona fide effort to sell it and should be reimbursed for the reasonable costs incurred.

(b) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the fair market value of the personal property for continued use at its location prior to displacement and the proceeds from its sale, or the estimated costs of moving 50 miles, whichever is less.

(c) When the personal property is abandoned, the displaced person is entitled to payment for the fair market value of the property for continued use at its location prior to displacement or the estimated cost of moving 50 miles, whichever is less.

(d) When personal property is sold and the business or farm operation reestablished, the displaced person is entitled to payment provided in § 916.67(b)(2).

(e) The costs of removal of the personal property shall not be considered as an offsetting charge against other payments to the displaced person.

Subpart F—Payments in Lieu of Moving and Related Expenses

§ 916.75 Eligibility.

Except as otherwise provided herein, a displaced person, including one who is displaced from a business or farm operation, who is eligible to receive payments for moving and related expenses under Subpart E of this part, may elect to receive payments in accordance with this Subpart 930-50.6 in lieu of payment for actual moving and related expenses.

§ 916.76 Displaced dwelling occupant.

A person displaced from a dwelling who elects to receive the payments authorized by this paragraph, in lieu of payment for actual moving expenses, may receive a moving expense allowance, determined in accordance with a schedule established by the Office, not to exceed $300, plus a dislocation allowance of $200.

(a) Only those persons who are displaced from a dwelling, as defined in § 916.5(g), may elect to receive the payment authorized under section 202(b) of the Act in lieu of payment for actual reasonable moving expenses.

(b) Where two or more individuals, not families, living together in a single family dwelling are displaced from such dwelling, they shall be treated as one displaced person for purposes of entitlements under this section.

§ 916.77 Moving allowance schedules.

Moving allowance schedules maintained by the respective State highway departments should be used as the basis for the Office schedules.

These schedules should provide for adequacy of reimbursement in every locality.

(a) The Federal Highway Administration will make current schedules available to displacing agencies upon request.

(b) In areas where there are no highway department schedules, Offices undertaking or providing Federal financial assistance to a project causing displacement in such areas shall cooperate with other displacing agencies in the development of a single moving expense schedule for the use of all such agencies.

§ 916.78 Displaced farm operation.

A person displaced from his/her farm operation, as defined in § 916.5(j), may elect to receive a fixed payment of not less than $2,500 nor more than $10,000 in lieu of actual moving expenses in accordance with the same criteria established for a person displaced from a business in § 916.80. Such a payment may be made to the displaced operator of a farm operation only if the acquiring Office determines that the farm operator has discontinued his/her entire farm operation at the present location or has relocated the entire farm operation.

§ 916.79 Farms—partial taking.

In the case of a partial taking, the operator will be considered to have been displaced from a farm operation if:

(a) The part taken met the definition of a farm operation prior to the taking and the part remaining does not; or

(b) The taking caused the operator to be displaced from the farm operation on the remaining land; or

(c) The taking caused such a substantial change in the nature of the existing farm operation as to constitute a displacement.

NOTE: If application of the above criteria obviously creates an inequity in any given case, the head of the Office may approve the use of other criteria as determined appropriate.

§ 916.80 Displaced business.

(a) A person displaced from his/her business, as defined in § 916.5(b) (1), (2), and (3), may elect to receive a fixed payment of not less than $2,500 nor more than $10,000 in lieu of actual moving and related expenses, *Provided*, That the displacing Office determines that, during the two taxable years prior to displacement, or during such other period as the head of the Office determines to be more equitable, the business:

(1) Had average annual gross receipts of at least $2,000 in value; or

(2) Had average annual net earnings of at least $1,000 in value; or

(3) Contributed at least 33⅓ percent of the average gross annual income of the owner(s) from all sources, including welfare.

NOTE: If application of the above criteria obviously creates an inequity in any given case, the head of the Office may approve the use of other criteria as determined appropriate.

§ 916.81 Determination of loss of existing patronage to a business.

The determination of loss of existing patronage to a business shall be made by the displacing agency only after consideration of all pertinent circumstances, including but not limited to the following factors:

(a) The type of business conducted by the displaced concern.

(b) The nature of the clientele of the displaced concern.

(c) The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person.

§ 916.82 Businesses not eligible to receive "in lieu" payment.

Those businesses described in § 916.5(b)(4) are not eligible to receive a fixed payment in lieu of payment for actual moving and related expenses.

§ 916.83 Displaced nonprofit organizations.

A displaced nonprofit organization may elect to receive a fixed payment, in lieu of payment for actual moving and related expenses, in an amount equal to the average annual net earnings of the nonprofit organization, except that such payment shall be not less than $2,500 nor more than $10,000. However, no payment shall be made pursuant to this paragraph until after the Office determines that:

(a) The nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

(b) The nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

§ 916.84 Average annual net earnings.

The term "average annual net earnings" as used in this subpart means the average net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired, or during such other period as the displacing agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his/her spouse or his/her dependents during such period.

Subpart G—Replacement Housing Payment for Homeowners

§ 916.87 Eligibility.

A displaced owner-occupant is eligible for a replacement housing payment not in excess of $15,000: *Provided,* That he/she meets both of the following requirements:

(a) Actually owned and occupied the dwelling from which displaced for not less than 180 days immediately prior to the initiation of negotiations (see § 916.5(n)) for the acquisition of the property; and

(b) Purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the 1-year period beginning on the date on which he/she receives from the displacing agency final payment of all costs of the acquired dwelling, or on the date on which he/she moves from the acquired dwelling, whichever is the later date.

§ 916.88 Owner-occupant of less than 180 days.

A displaced owner-occupant of a dwelling who is determined to be ineligible for a replacement housing payment under this Subpart G may be eligible for a payment under Subpart H of this part.

§ 916.89 Elements included in replacement housing payment.

The replacement housing payment authorized by this subpart is in addition to payments otherwise authorized by title II of the Act. It includes the following elements:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, is necessary to purchase a comparable replacement dwelling as defined in § 916.5(c).

(b) The amount, if any, necessary to compensate the displaced person for increased interest costs, including points, which he/she is required to pay for financing the purchase of a comparable replacement dwelling. This amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage. A bona fide mortgage is one which was a valid lien on the acquired dwelling for not less than 180 days prior to initiation of negotiations.

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

§ 916.90 Computation of replacement housing payment.

Offices shall determine the amounts necessary to compensate a displaced person for the replacement housing differential payment, increased interest costs, and incidental expenses in accordance with § 916.91.

§ 916.91 Differential payment for replacement housing.

The replacement housing differential payment may be determined by either establishing a schedule or by using a comparative method.

(a) *Schedule method.* A schedule may be established reflecting reasonable acquisition costs for comparable replacement dwellings of the various types of dwellings to be acquired and available on the private market.

(1) The schedule shall be based on a current analysis of the market to determine an amount for each type of dwelling required.

(2) When more than one Office of the National Oceanic and Atmospheric Administration is causing displacement in a community or an area, they shall coordinate the establishment of a single schedule for replacement housing payments. Similarly, Offices shall cooperate with other Federal agencies causing displacement in the community or area, if any, in the development of such a schedule.

(b) *Comparative method.* The price of a comparable replacement dwelling may be determined by selecting one or more dwellings most representative of the dwelling unit acquired which are available to the displaced person on the private market and which meet the definition of comparable replacement dwelling. A single dwelling shall only be used when additional comparable dwellings are unavailable.

(c) *Alternate method.* In the event that neither the schedule or comparative methods is feasible, the displacing agency should develop criteria for computing replacement housing payments. In the case of a federally assisted program, any alternate method proposed by a State agency should be subject to the prior concurrence of the Office administering such program.

(d) The method of determining the replacement housing differential payment shall be selected by the acquiring agency.

(e) *Limitations.* The amount established as the differential payment for the replacement housing, plus the costs referred to in §§ 916.89(b) and 916.89(c), sets the upper limit of this payment.

(1) If the displaced person voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the amount established for comparable replacement housing, the differential payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(2) If the displaced person voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

§ 916.92 Interest payment.

Displaced persons shall be compensated for increased interest costs, if any, only if the acquired dwelling was encumbered by a bona fide mortgage. The payment for any increased interest costs including points, incurred by the displaced person, shall be determined in consideration of the following:

(a) The payment shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the bona fide mortgage on the acquired dwelling, at the time of acquisition, over the remaining term of the mortgage on the acquired dwelling, reduced to discounted present value.

(b) The discount rate shall be the mean annual interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) A "bona fide mortgage" is one which was a valid lien on the acquired dwelling for not less than 180 days prior to the initiation of negotiations. All bona fide mortgages on the dwelling acquired by the displacing agency will be used to compute the increased interest cost portion of the replacement housing payment.

(d) The computation of the payment for increased interest costs will be based on the actual term of the new mortgage or the remaining term of the old mortgage, whichever is the lesser, and the computation will be based on the actual amount of the new mortgage or the unpaid amount of the old mortgage, whichever is the lesser.

(1) Seller's points are not to be included in the interest computation.

(2) The actual interest rate of the new mortgage will be used in the computation.

(3) Purchaser's points and/or loan origination fees will be added to the computed interest payment.

(e) However, the interest payment shall be based on the present value of the reasonable cost of the interest differential, including points paid by the purchaser, on the amount financed not to exceed the amount of the unpaid debt on the acquired dwelling for its remaining term.

(f) The format described in Exhibit 1 of this Part 916 shall be used in the computation of the interest payment.

EXHIBIT 1—FORMAT; COMPUTATION OF INTEREST PAYMENT

Required Information

1. Outstanding balance of mortgage on acquired dwelling	$	
2. Outstanding balance of mortgage on replacement dwelling		
3. Lesser of Line 1 or Line 2		
4. Number of months remaining until last payment is due for mortgage on acquired dwelling		
5. Number of months remaining until last payment is due for mortgage on replacement dwelling		
6. Lesser of Line 4 or Line 5		
7. Annual Interest rate of mortgage on acquired dwelling		%
8. Annual interest rate of mortgage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institutions in the general area in which the replacement dwelling is located).		%
9. Prevailing annual interest rate paid on standard passbook savings accounts by commercial banks		%
10. If applicable, any debt service costs on the loan on the replacement dwelling, such as points paid by the purchaser which are not reimbursable as an incidental expense.		

DEVELOPMENT OF MONTHLY PAYMENT FIGURES

A. Monthly payment required to amortize a loan of $ (Line 3) ——— (Line 6) months at an annual interest rate of (Line 7).	$	%
B. Monthly payment required to amortize a loan of $ (Line 3) in (Line 6) months at an annual interest rate of (Line 8).		%
C. Monthly payment required to amortize a loan of $ (Line 3) in (Line 6) months at an annual interest rate of (Line 9).		%

CALCULATION OF INTEREST PAYMENT

Step 1 Subtract A from B:		
Monthly payment based on rate for replacement dwelling (B)		
Monthly payment based on rate for acquired dwelling (A)		
Result (difference)		
Step 2 Divide result (difference) of Step 1 by C (carry to 6 decimal places):		
Result (difference) from Step 1		
Monthly payment based on savings rate (C)		
Result (quotient)		
Step 3 Multiply outstanding balance of mortgage on acquired dwelling by result (quotient) of Step 2:		
Outstanding Balance (from Line 3)		
Result (quotient) of Step 2	$	
Result (product)	×	
Step 4 Add to result (product) of Step 3 any debt service costs on the loan on the replacement dwelling:		
Result (product) of Step 3, first mortgage		
Result (product) of Step 3, second mortgage [1]		
Sum or difference, as applicable [1]		
Add debt service costs on loan on replacement dwelling (Line 10)		
Amount of interest payment		

[1] If there is more than one outstanding mortgage on an acquired dwelling, the discounted value of each mortgage must be determined. To do this, a separate computation is made to each mortgage through Step 3. A consolidated Step 4 is then completed.

§ 916.93 Incidental expenses.

(a) The payment for incidental expenses, i.e., the amount necessary to reimburse a displaced person for reasonable costs incurred by him/her incident to purchase of a replacement dwelling, shall be determined in consideration of such costs as:

(1) Legal, closing, and related costs including title search, preparing conveyance instruments, notary fees, surveys, preparing plats, and charges incident to recordation.

(2) Lenders, Federal Housing Administration, or Veterans Administration appraisal fees.

(3) Federal Housing Administration application fee.

(4) Certification of structural soundness when required by lender, Federal Housing Administration, or Veterans Administration.

(5) Credit report.

(6) Title policies or abstracts of title.

(7) Escrow agent's fee.

(8) State revenue stamps, or sale or transfer taxes.

(b) No fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, title I, Pub. L. 90-321, and Regulation "Z" (12 CFR Part 226) issued pursuant thereto by the Board of Governors of the Federal Reserve System.

§ 916.94 Statement of eligibility pending purchase of replacement dwelling.

Upon request of a displaced owner-occupant who has not yet purchased and occupied a replacement dwelling, but who is otherwise eligible for a replacement housing payment under this subpart, Offices shall furnish a written statement to any interested person, financial institution, or lending agency as to the displaced person's eligibility for a payment and the requirements which must be satisfied before such payment can be made.

§ 916.95 Advance payment in condemnation cases.

In a condemnation proceeding involving a declaration of taking, an advance replacement housing payment may be made to a homeowner if determination of the acquisition price of the acquired dwelling will be delayed pending the outcome of condemnation proceedings. Inasmuch as the exact amount of the replacement housing payment cannot be ascertained until final adjudication of the condemnation suit, a provisional replacement housing payment may be determined based on the displacing agency's offer for the property acquired. No such payment may be made, however, unless the homeowner agrees, in writing, that:

(a) Upon final determination of the condemnation proceeding, the replacement housing payment will be recomputed on the basis of the acquisition price determined by the court;

(b) If the acquisition price as determined by the court is greater than the displacing agency's offer upon which the provisional replacement housing payment was based, the difference up to the extent of the replacement housing payment advanced shall be refunded (including interest computed at the same rate as that paid by the agency on that portion of the acquisition price above the agency's offer) to the displacing agency; and

(c) If the acquisition price as determined by the court is less than the displacing agency's offer upon which the provisional replacement housing payment was based, the difference shall be paid to the homeowner.

Subpart H—Replacement Housing Payment for Tenants and Certain Others

§ 916.98 Eligibility requirements.

(a) Displaced tenant or owner-occupant of less than 180 days. A displaced tenant (including a sleeping room occupant) or owner-occupant of a dwelling for less than 180 days, is eligible for a replacement housing payment if he/she actually occupied the dwelling as a permanent abode for not less than 90 days immediately prior to the initiation of negotiations (see § 916.5(h)) for acquisition of the property.

§ 916.99 Notification to tenants.

Offices shall notify the tenant or other occupant, in writing, of the date of initiation of negotiations.

§ 916.100 Replacement housing payment.

A displaced tenant or owner-occupant of less than 180 days who meets the eligibility requirements of § 916.98(a) is eligible for either:

(a) The differential payment necessary to enable him/her to lease or rent, for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public, utilities and public and commercial facilities, and reasonably accessible to his/her place of employment, but not to exceed $4,000, or

(b) If he/she purchases and occupies replacement housing within one year from displacement, the amount necessary to enable him/her to make a downpayment, including incidental expenses, on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

§ 916.101 Computation of replacement housing rental differential payment for tenants and certain others.

Offices shall establish the amount necessary to rent a comparable replacement dwelling. The amount may be determined either by establishing a schedule or by a comparative method.

(a) *Schedule method.* A rental schedule may be established for renting comparable replacement dwellings of the various types required and which are available in the private market. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced person in the past 3 months prior to initiation of negotiations, if such rent was reasonable, or 48 times the monthly economic rent for the dwelling unit, as established by the Office, if the actual rent paid was unreasonable.

(1) The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required.

(2) When more than one Office of the National Oceanic and Atmospheric Administration is causing displacement in the same community or area, they shall coordinate with each other in choosing the method for computing the replacement housing payment and may use uniform schedules of average rental housing in the community or area. Similarly, Offices shall cooperate with other Federal Agencies causing displacement in the community or areas, if any, in the establishment of the schedule.

(b) *Comparative method.* The average month's rent may be determined by selecting one or more dwellings most representative of the dwelling unit acquired, which is available to the displaced person and meets the definition of comparable replacement dwelling. The payment should be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years and subtracting from such amount 48 times the average month's rent paid by the displaced person in the last 3 months prior to initiation of negotiations, if such rent was reasonable, or 48 times the monthly economic rent for the dwelling unit, as established by the Office, if the actual rent paid was unreasonable.

(c) *Exceptions.* The average month's rent paid by the displaced person may be established by using more than 3 months when deemed advisable. If rent is being paid to the displacing agency, economic rent shall be used in determining the amount of the payment to which the displaced person is entitled.

(d) Alternate method of computing replacement housing rental differential payment. When neither the schedule or the comparative method of computing the rental differential payment is feasible, the Office shall develop criteria for computing the payment.

(e) *Limitation.* The amount of the rental replacement housing payment (within the $4,000 limitation) for tenants and owner-occupants who rent instead of purchase replacement housing, shall be computed by subtracting the economic rent of the acquired dwelling from the lesser of:

(1) The amount of rent actually paid for the replacement dwelling; or

(2) The amount determined by the displacing agency as necessary to rent a comparable replacement dwelling.

(f) The amount initially established and approved as the rental replacement housing payment shall not be adjusted to compensate for subsequent increases or decreases, if any, in the amount of rent actually paid by the displacee.

§ 916.102 Computation of replacement housing payment—purchasers.

(a) The amount of the downpayment shall be the lesser of:

(1) The amount that would be required as a downpayment for financing a conventional loan on a comparable dwelling; or

(2) The amount required as a downpayment for financing of a conventional loan on the replacement dwelling actually purchased.

(b) To the amount determined pursuant to paragraph (a)(1) or (a)(2) of this section will be added the amount required to be paid by the purchaser as points and/or origination or loan services fee if such fees are normal to real estate transactions in the area, on the comparable dwelling or the replacement dwelling whichever is the lesser.

§ 916.103 Disbursement of rental replacement housing differential payment.

The amount of the rental replacement housing payment, determined in accordance with § 916.101, shall be paid in a lump sum, except that it shall be paid in installments when this method of payment is requested by the displaced person.

Subpart I—Federally Assisted Programs

§ 916.106 Acceptance of real property furnished by a State incident to NOAA program.

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a NOAA program or project, the Office administering the program or project may not accept such property unless the State agency has made all payments and provided all assistance and assurances as are required of a State agency by sections 210 and 305 of the Act. The State agency shall pay the cost of such requirements in the same manner and to the same extent as the cost of the real property acquired for such project.

§ 916.107 Assurances—section 210.

Offices shall not approve any grant to, contract, or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of the Act, unless satisfactory assurances are received from the State agency that:

(a) Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by Offices under this part;

(b) Relocation assistance programs offering the services described in Subpart C of this part shall be provided to the displaced persons;

(c) A survey and analysis of the available replacement housing has been made in accordance with § 916.60 and that within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with Subpart D of this part; and

(d) The affected persons will be adequately informed of the benefits available under title II of the Act, and the policies and procedures relating to the payment of such benefits.

§ 916.108 Assurances—section 305.

Offices shall not approve any program or project or any grant to contract, or agreement with a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on or after the effective date of the Act, unless satisfactory assurances are received from the State agency that:

(a) In acquiring real property, the State agency will be guided, to the greatest extent practicable under

State law, by the land acquisition policies set forth in Subpart B of this part;

(b) Property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Act; and

(c) The affected persons will be adequately informed of the benefits available under title III of the Act and the policies and procedures relating to the payment of such benefits.

§ 916.109 Compliance with section 210.

In all cases, State agencies must comply fully with the assurances required by section 210 of the Act.

§ 916.110 Compliance with sections 301 and 302.

A State agency's assurnaces under section 305 of the Act shall be accompanied by a statement indicating the extent to which it can comply with the provisions of sections 301 and 302 of the Act. In the event a State agency maintains that it is unable to comply fully with any of the prescribed policies, its statement shall be supported by an opinion of the chief legal officer of the State agency. State agencies shall comply with sections 301 and 302 of the Act if compliance is legally possible under State law.

§ 916.111 Inability to provide assurances under section 305.

If a State agency's assurances are accompanied by a statement that it is unable to comply fully with the provisions of section 305 of the Act, the head of the Office administering the federally assisted project involved may prescribe procedures setting forth the conditions under which the project will be approved.

§ 916.112 Assurances not required.

If the federally assisted program or project will not result in either the acquisition of real property or the displacement of persons, a grant, contract, or agreement may be executed with the State agency without regard to such State agency's ability or inability to provide the assurances required by sections 210 and 305 of the Act.

§ 916.113 Monitoring assurances.

Offices shall monitor the assurnaces provided by State agencies on a continuing basis to insure that federally assisted programs and projects are carried out in conformance with such assurances.

§ 916.114 Federal share of costs.

The cost to a State agency of providing the payments and assistance required by the regulations in this part shall be included as part of the cost of a program or project for which Federal financial assistance is available to the State agency.

(a) The State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other project or program costs.

(b) No payment or assistance under section 210 or 305 of the Act shall be required or included as a program or project cost under this section if the displaced person receives a payment required by State law of eminent domain which is determined by the Office to have substantially the same purpose and effect as would a payment under this paragraph, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Offices may advance to a State agency the Federal share of the cost of any payments or assistance by the State agency pursuant to sections 206, 210, 215, and 305 of the Act, when they determine that such action is necessary for the expeditious completion of a program or project.

§ 916.115 Relocation assistance programs.

State agencies receiving Federal financial assistance on a project which will result in the displacement of persons, shall provide relocation assistance advisory services to the displaced persons in accordance with the provisions of Subpart C of this part.

§ 916.116 Waiving of benefits.

(a) Whenever NOAA, or in the case of a federally assisted project, a State agency, provides that the owner of a single-family residence may, at his/

her option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed to have waived any benefits under sections 203, 204, 205, and 206 of the Act, and for the purposes of these sections, such owner shall not be considered a displaced person as defined in section 101(6) of the Act.

(b) Retention of a residence under a use and occupancy agreement must be compatible with the intended use of the project site. Moreover, the appraisal should properly reflect the effect such a retention of use has upon the property's fair market value.

(c) In no case shall a State refuse to pay relocation payments for homeowners who were allowed temporary occupancy while awaiting for replacement property.

(d) [Reserved]

(e) An owner of a single-family residence who elects to retain a right of use and occupancy for not less than six months from date of acquisition of such residence shall be informed that any benefits to which he/she may be entitled under sections 203, 204, 205, and 206 of the Act will be deemed to have been waived as a result of such use and occupancy.

§ 916.117 Appeal procedures.

Prior to approving any federally assisted project, heads of Offices administering federally assisted programs or projects which will result in the displacement of persons shall require the State agency to furnish a description of the appeal procedures that are available to such displaced persons, to assure that any person aggrieved by a determination as to eligibility for a payment authorized by the Act or the amount of a payment, may have his/her application reviewed by the head of the State agency.

Subpart J—Administrative Review and Appeals

§ 916.120 Compliance reviews.

The head of each Office engaged in NOAA programs or federally assisted programs administered by NOAA which involve the acquisition of real property and/or the displacement of persons shall provide for such periodic review of the operations at regional and other field office levels as he/she deems necessary to insure proper implementation of, and full compliance with, the provisions of the Act and the regulations in Parts 930 through 950.

§ 916.121 Appeals.

All eligible relocatees shall be furnished a written notice of their right to appeal. Such notification may be provided by brochure if the right to appeal is adequately described therein.

§ 916.122 Appeals procedure.

In NOAA acquisition programs any dispute concerning a question arising under the Act which is not disposed of by agreement shall be decided by the head of the Office who shall reduce his decision to writing and mail a copy thereof to the displaced person. This decision shall be final and conclusive unless, within 30 days from date of mailing of such copy, the displaced person mails a written appeal addressed to the Administrator, National Oceanic and Atmospheric Administration, Rockville, Maryland, in accordance with the regulations in 43 CFR Part 4, Subpart G. The decision of the Administrator shall be final and conclusive. In connection with any appeal to the Administrator, the displaced person may be afforded an opportunity to be heard and to offer evidence in support of his appeal, as provided for in 43 CFR Part 4, Subpart G.

Subpart K—Annual Report

§ 916.125 General.

Each Office having responsibilities for Federal or federally assisted programs that come within the purview of Pub. L. 91-646 shall prepare and submit an annual report to the Administrator, NOAA on its activities related to programs and policies established or authorized by the Act. This report, which is required by section 214 of the Act, shall consist of both a narrative and statistical report.

§ 916.126 Narrative report.

The narrative portion of the report should be consolidated for the Office and submitted, in duplicate, in the form of an attachment to a transmittal memorandum. It shall respond to each of the items set out in the following subparagraphs as the item pertains to the respective Office. Narrative comments should be furnished for all items. If an item is not applicable to an Office, or if a negative response pertains to a particular item, the report should so indicate.

(a) *Assurance of required replacement housing.* (1) Each Office should comment on the effectiveness of the provisions of the Act relating to assurnaces of the availability of comparable decent, safe, and sanitary replacement housing for displaced homeowners and tenants.

(2) Describe the actions taken by the Office to assure compliance with the requirements of sections 205(c)(3), 206(b), and 210(3) of the Act.

(3) Provide information on all court decisions affecting the Office which concern the adequacy of replacement housing.

(b) *Office actions to achieve objectives of the Act.* (1) Describe the actions taken by the Office to achieve the objectives of the policies of the Congress to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by or having real property taken for Federal or federally assisted programs.

(2) Describe the provisions adopted by the Office for coordination with other Federal, State and local displacing agencies.

(c) *Progress in achieving objectives of the Act.* Report the progress of the Office in the various programs conducted or administered, indicating:

(1) The success in coordinating Office relocation activities with other Federal, State, and local agencies.

(2) Office experience and the cost of utilization of authority under section 206(a) of the Act to provide replacement housing, citing difficulties, if any, in obtaining funds for this purpose and the impact on specific projects.

(3) Office experience and cost of implementing section 215 of the Act, concerning loans for planning and obtaining federally insured mortgage financing for replacement housing.

(4) For federally assisted programs administered by the Office, enumerate the States not in compliance with the Act or the reporting date. If compliance by any State does not extend to any or all federally assisted programs conducted or administered by the Office, the programs excepted should be indicated and an explanation furnished for the basis of the State's inability to comply. In all such instances, indicate the expected date for full compliance by the state.

(5) Describe adverse effects of the Act, if any, on programs conducted by the Office.

(d) *Effect of Act on the public.* Describe any indicated effects of the relocation program and policies on the public, reporting conclusions obtained from surveys, special studies, and other sources relating to the effects of implementation of the Act on a neighborhood or community.

(e) *Recommendations.* Furnish any recommendations for further improvement in relocation assistance and land acquisition programs, policies, and implementing laws and regulations. Include any proposals for amendments or revisions to:

(1) General Services Administration Guidelines.

(2) Federal legislation.

(3) State legislation.

(f) *Waiver of assurances of replacement housing.* Describe any situations or circumstances which required a waiver of assurance of replacement housing pursuant to subsection 205(c)(3) of the Act. For any waivers reported, submit the Office findings and determination supporting waiver of the requirements of the subsection.

§ 916.127 Statistical report.

The statistical portion of the report shall be submitted on General Services Administration Form 2997. The forms should be consolidated for the Office and submitted in duplicate. Those Offices administering both Federal and federally assisted programs shall submit separate consolidated forms for such programs.

§ 916.128 Submission.

The annual report shall be prepared on a fiscal year basis and submitted in duplicate to reach the Administrator, NOAA, by not later than September 1 of each year.

PART 917—NATIONAL SEA GRANT PROGRAM FUNDING REGULATIONS

Subpart A—General

Sec.
917.1 Basic provisions.
917.2 Definitions.

Subpart B—Sea Grant Matched Funding Program

917.10 General.
917.11 Guidelines for Sea Grant Fellowships.

Subpart C—National Projects

917.20 General.
917.21 National needs and problems.
917.22 National Projects funding.

Subpart D—International Cooperation Assistance

917.30 General.

Subpart E—General Considerations Pertaining to Sea Grant Funding

917.40 General.
917.41 Application guidance for Sea Grant funding.
917.42 Categories of support available for the conducting of Sea Grant activities.
917.43 Terms and conditions of Sea Grant funding.

AUTHORITY: Pub. L. 94-461, 90 Stat. 1961 (33 U.S.C. 1121 et seq.).

Source: 43 FR 15307, Apr. 11, 1978, unless otherwise noted.

Subpart A—General

§ 917.1 Basic provisions.

(a) This section sets forth the basic purposes for which Sea Grant funding may be made pursuant to the following sections of the Act: 33 U.S.C. 1124, 1127, 1125 and 1124a. These sections provide for the funding of programs and projects in fields related to ocean and coastal resources that involve marine research, marine education and training, and marine advisory services. However, there is a significant difference in focus among these sections since section 1124(a) is concerned chiefly with regional and state needs relative to ocean and coastal resources (including the funding of Sea Grant Fellowships under section 1127) while section 1125 is concerned with national needs and problems relative to ocean and coastal resources, and section 1124a is concerned with programs of international cooperation assistance with respect to those resources.

(b) *Comment:* Statutory citation 33 U.S.C. 1124(a):

> In General. The Secretary may make grants and enter into contracts under this subsection to assist any Sea Grant program or project if the Secretary finds that such program or project will—
>
> (1) Implement the objective set forth in Section 202(b); and
>
> (2) Be responsive to the needs or problems of individual states or regions.
>
> The total amount paid pursuant to any such grant or contract may equal 66⅔ percent, or any lesser percent, of the total cost of the Sea Grant program or project involved.

(c) *Comment:* Statutory citation 33 U.S.C. 1127(a):

> In General. The Secretary may enter into contracts and make grants under this section to—
>
> (1) Enhance the research and development capability of developing foreign nations with respect to ocean and coastal resources.
>
> (2) Promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources.

§ 917.2 Definitions.

(a) The term "Act" means the Sea Grant Program Improvement Act of 1976, as amended (33 U.S.C. 1121 et seq.).

(b) The term "Secretary" means the Secretary of Commerce.

(c) The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(d) The term "Office of Sea Grant" means the National Oceanic and Atmospheric Administration's Office of Sea Grant, which administers the National Sea Grant Program provided for in the Act.

(e) The term "objective of the Act" means the objective set forth at 33 U.S.C. 1121(b) and is "is to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean and coastal resources by providing assistance to promote a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques."

(f) The term "ocean and coastal resource(s)" is as defined at 33 U.S.C. 1122(7) and means:

> any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment.
>
> Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, esthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

(g) The term "marine environment" used in the definition for "ocean and coastal resources" in § 917.2(e) and used elsewhere in these regulations is as defined at 33 U.S.C. 1122(6) and means:

> the coastal zone, as defined in Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil, and waters of the territorial sea of the United States; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the outer Continental Shelf.

(h) The term "person" is as defined at 33 U.S.C. 1122(9) and means: "any individual; any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, education, institute, or laboratory); or any state, political subdivision of a state, or agency or officer thereof."

(i) The term "Sea Grant College" is as defined at 33 U.S.C. 1122(10) and means: "any public or private institution of higher education which is designated as such by the Secretary . . ." pursuant to regulations promulgated at 15 CFR Part 918.

(j) The term "Sea Grant Program" is as defined at 33 U.S.C. 1122(11) and means: "any program which" (1) is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or state or local agency; and (2) includes two or more projects involving one or more of the following activities in fields related to ocean and coastal resources:

(i) Research,
(ii) Education,
(iii) Training, or
(iv) Advisory services.

(k) The term "Sea Grant Program Directors" means the local Directors of the Sea Grant coherent area programs, insititutional programs, Sea Grant Colleges, and Sea Grant Regional Consortia.

(l) The term "Sea Grant Regional Consortium" is as defined at 33 U.S.C. 1122(12) and means: "any association or alliance which is designated as such by the Secretary . . ." pursuant to regulations promulgated at 15 CFR Part 918.

(m) The term "state" is as defined at 33 U.S.C. 1122 (14) and means: "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, or any other territory or possession of the United States."

(n) The term "developing foreign nations" includes any foreign nation other than a foreign nation that is ineligible for designation under section 502(b) of the Trade Act of 1974, (19 U.S.C. 2462(b)) as a benificiary developing country under Title of that Act.

Subpart B—Sea Grant Matched Funding Program

§ 917.10 General.

(a) 33 U.S.C. 1124(a) establishes a program for the funding of Sea Grant Programs and projects dealing with marine research, marine education and training, and/or marine advisory services, that are designed to achieve the objective of the Act and that generally respond to the needs of individual states or regions. Included as a part of this program is the Sea Grant Fellowship Program, established by 33 U.S.C. 1127. Any person may apply to the Office of Sea Grant for Sea Grant Matched Funding Program Monies, except for Sea Grant Fellowship funding. Sea Grant Fellowship funding may be granted only to Sea Grant Colleges, Sea Grant Regional Consortia, institutions of higher education, and professional associations and institutions.

(b) Federal Sea Grant funding for the section 1124(a) Matched Funding Program cannot exceed 66⅔ percent of the total cost of the project involved.

§ 917.11 Guidelines for Sea Grant Fellowships.

(a) Sea Grant Fellowships are designed to provide educational and training assistance to qualified individuals at the undergraduate and graduate levels of education in fields related to ocean and coastal resources. The objective of the program is to increase the national supply of individuals educated and trained in the assessment, development, utilization, and conservation of ocean and coastal resources. The purpose of this section is to provide guidelines regarding the content of applications for Sea Grant Fellowship funding.

(b) Funding will be made to eligible entities (see § 917.10 of this part) that are selected to award and administer Sea Grant Fellowships. Fellowships will not be awarded directly to students by the Office of Sea Grant. The entity receiving Fellowship funding will select the students to be awarded the Fellowships and will handle the administration of the Fellowships.

(c) Proposals for Fellowship funding will be expected to address (1) the nature and focus of the proposed Fellowship Program, (2) the utilization of institutional or other appropriate resources in the education and training of Sea Grant Fellows, (3) the method of advertising availability of the Fellowships, (4) the method of selection of recipients, and (5) the terms of tenure and method of determining continuity of tenure.

(d) Innovation and uniqueness will be significant factors in the determination of which proposals will be funded. Another factor considered will be the potential of the proposed program to stimulate interest in marine related careers among those individuals; for example, minorities, women, and the handicapped whose previous background or training might not have generated such an interest.

(e) The total amount that may be provided for grants under the Sea Grant Fellowship Program during any fiscal year cannot exceed an amount equal to five percent of the total funds appropriated for the Matched Funding Program for that year. Fellowship programs are subject to the requirement of a minimum of 33⅓ percent matching funds from non-Federal sources to which all Matched Funding Program projects are subject. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships.

Considering the variations in the cost-of-living and the differences in tuition, fees, etc., between one college or university and another, the amount of money requested and awarded per Fellowship may vary.

Subpart C—National Projects

§ 917.20 General.

(a) 33 U.S.C. 1125 requires the Secretary to identify specific national needs and problems relative to ocean and coastal resources. This responsibility has been delegated to the Administrator. The designation is intended to focus public attention on needs and problems of the marine environment that are considered to be of particular national importance at a given point in time.

(b) 33 U.S.C. 1125 provides for the funding of national projects in marine research, marine education and training, and marine advisory services that are designed to deal with the national needs and problems concerning ocean and coastal resources identified by the Administrator.

(c) The Administrator will identify the national needs and problems apart from considerations of Office of Sea Grant funding for "National Projects" responsive to national needs and problems that are identified.

§ 917.21 National needs and problems.

(a) The Administrator will, periodically, publish in the FEDERAL REGISTER the identified national needs and problems with respect to ocean and coastal resources at a given point in time.

(b) Suggestions from the general public as to the identity of national needs and problems may be submitted to the Office of Sea Grant at any time. These suggestions will be reviewed by the Office of Sea Grant and the Sea Grant Review Panel, and those receiving a positive critique will be forwarded to the Administrator. In addition, suggestions concerning the identification of national needs and problems will be requested from the Sea Grant Program Directors.

(c) The Administrator has identified the following as currently being national needs and problems with respect to ocean and coastal resources:

(1) The development and the experimental verification of hydrodynamic laws governing the transport of marine sediments in the flow fields occurring in coastal waters.

(2) Formulate improved schemes for the management of all fisheries within the 200-mile fisheries zone under U.S. jurisdiction.

(3) Expand the mix of seafood products produced in the U.S. and develop appropriate mechanisms for marketing them domestically and in foreign markets.

(4) Improve the prediction of extreme natural events at coastal locations (such as flooding by tsunamis or wind setup and waves and surf resulting from severe storms) and the preparation of coastal communities to avoid property loss and take appropriate action to safeguard life.

(5) Ascertain the potential effects on Federal and State laws of agreement or nonagreement on a comprehensive Law of the Sea Treaty.

(6) Reexamine the ocean as an appropriate place for the disposal of wastes from land-based society.

(7) Reduce the recurring economic loss due to corrosion of structures, vessels, and other devices in the marine environment.

(8) Develop productive and profitable mariculture industries in the United States and technology that can be exported to other regions of the world with different climatic, cultural, and economic constraints.

(9) More fully explore the marine biochemical resources and carry out their pharmacological, chemical, and biological evaluation.

(10) Thoroughly explore, and exploit where possible, all options for practical extraction of energy from the oceans.

(11) Develop rapid, efficient and specific methods for assaying the potential of marine waters or marine animals to communicate disease to humans.

(12) Gain a fundamental understanding of the processes by which biological fouling is initiated upon material surfaces exposed to natural sea water.

(13) Completely and objectively examine the social and economic impacts of marine mammal protection and project these into the future.

(14) Improve understanding of the flow fields and mixing processes on the continental shelves of the United States and the determining mechanisms.

(15) Define the processes that determine ocean variability on the time scale of a few weeks to a few years, and the relationship to fluctuations in global and regional climate and primary productivity.

[43 FR 15307, Apr. 11, 1978, as amended at 43 FR 35030, Aug. 8, 1978]

§ 917.22 National Projects funding.

(a) National Projects funding proposals will be expected to address: (1) The relevance of the proposed project to a national need or problem that has been identified by the Administrator; (2) the nature and focus of the proposed project; (3) a demonstrated capacity to carry out the proposed project in a competent and cost-effective manner; and (4) the utilization of existing capability and coordination with other relevant projects. Innovation and uniqueness will be significant factors in determining whether to fund a proposed project.

(b) Any person may apply to the Office of Sea Grant for National Project funding. In addition, the Office of Sea Grant may invite applications for National Project funding.

(c) The total amount provided for National Projects' funding during any fiscal year can never exceed an amount equal to 10 percent of the total funds appropriated for the Matched Funding Program. Federal Sea Grant funding for National Projects can be up to 100 percent of the total cost of the project involved.

Subpart D—International Cooperation Assistance

§ 917.30 General.

(a) 33 U.S.C. 1124a sets up a program of International Cooperation Assistance in marine reseach, marine education and training, and marine advisory services designed to enhance the research and technical capability of developing foreign nations with respect to ocean and coastal resources and to promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources. Any Sea Grant College or Sea Grant Regional Consortium or any institution of higher education, laboratory, or institute (if such institution, laboratory or institute is located within any state) may apply for and receive International Cooperation Assistance funding.

(b) International Cooperation Assistance funding proposals will be expected to address: (1) The nature and focus of the proposed project, (2) the utilization of institutional and other appropriate resources in the implementation of the project, (3) a clear indication of the foreign participant's (individual or institution) commitment to the project, (4) identification of accomplishments expected from a single granting interval, (5) implicit or explicit out-year commitment of resources, and (6) the impact of the proposed project on the institution receiving funding.

(c) The projects supported by International Cooperation Assistance funding are intended to be genuinely cooperative. Innovation and uniqueness will be significant factors in the determination of proposals to be funded. In the case of a proposed international project that is submitted from an institution where a Sea Grant program is in existence, the extent to which the proposed project takes advantage of the Sea Grant institutional capability existing at that institution and thereby strengthening it, as opposed to being a mere appendage to the ongoing Sea Grant program, will also be an important evaluation factor. The U.S. Department of State will be given the opportunity to review all International Cooperation Assistance projects and none will be funded without this consultation. Because the United Nations Educational, Scientific, and Cultural Organization (UNESCO) also funds international projects of the kind that can be funded under the Sea Grant International Cooperation Assistance program, and, to effect coordination in this area between Sea Grant and UNESCO, the Division of Marine Sciences (UNESCO) will be informed of all International Cooperation Assistance projects funded.

Subpart E—General Considerations Pertaining to Sea Grant Funding

§ 917.40 General.

This subpart sets forth general considerations pertaining to Sea Grant funding.

§ 917.41 Application guidance for Sea Grant funding.

(a) Detailed guidance for submission of applications for National Sea Grant Program Funding is given in the publication, "The National Sea Grant Program: Program Description and Suggestions for Preparing Proposals," available on request from: Office of Sea Grant Program, 3300 Whitehaven Street NW., Washington, DC 20235.

(b) It is noted here that application for Sea Grant funding shall be made pursuant to the following Federal provisions:

(1) OMB Circular A-110 "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

(2) OMB Circular A-111, "Designation of Federal Programs Suitable for Joint Funding Purposes."

(3) GSA FMC 73-6, "Coordinating Indirect Cost Rates and Audit at Educational Institutions."

(4) GSA FMC 73-7, "Administration of College and University Research Grants."

(5) GSA FMC 73-8, "Cost Principles for Educational Institutions."

(6) GSA FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(7) OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

(8) NOAA General Provisions implementing OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

§ 917.42 Categories of support available for the conducting of Sea Grant activities.

(a) Three categories of support are available for the conducting of Sea Grant activities: Projects; coherent area programs; and institutional programs. In general, funding for institutional programs and coherent area programs are made with expectation of renewal, as long as the funding recipient maintains a high level of quality and relevance in its activities. Project funding is made generally for a single item of research, education and training, or advisory service, but may be renewed under certain conditions; each renewal is negotiated individually.

(b) Project support is for a clearly defined activity to be conducted over a definite period of time to achieve a specified goal. The project may be in research, education, training, or advisory services. Support for a project is made to an individual investigator or project director through his organization.

(c) Intermediate between the institutional programs and individual projects are coherent area programs. These have two main purposes:

(1) To bring into the National Sea Grant Program institutions of higher education that have a strong core of capability in some aspects of marine affairs, but which do not qualify or do not wish to qualify for institutional program support at this time. The purpose of support in such cases is to enable the institution to apply its existing competence to its regional problems and opportunities while developing the broader base of capability and the internal organization that will lead to institutional support. This program category requires a definite commitment on the part of the institution to develop an institutional program and to present a multiproject, multidisciplinary program involving the existing competence of an institution in a unified or coherent attack on well-defined local or regional problems. Such a coherent area program should include research, education and training, and advisory services, to the extent of the institution's capability.

(2) To bring into the National Sea Grant Program (on a more or less continuing basis) qualified entities that have rare or unique capability in a specialized field of marine affairs. Such entities need not be institutions of higher education.

(d) Institutional grants are made to institutions of higher education or to a combination of institutions that have an existing broad base of competence in marine affairs. To qualify, an institution must make a positive, long-range commitment to objectives of the National Sea Grant Program as evidence by committing the institution's own resources in the form of matching funds, creation of the organization necessary for management of the Sea Grant Program, quality education programs in marine areas, establishment of interdisciplinary research teams, and development of advisory service mechanisms for strong interaction with marine communities in its region. A Sea Grant institutional program is expected to provide intellectual leadership in assisting its region to solve problems and to realize opportunities of its marine environment. To the extent possible, an institutional program should involve all appropriate elements of the institution, whether colleges or departments, and devise cooperative or mutally supporting programs with other institutions of higher education, and with Federal and state agencies, local agencies, and industry. An institutional program should have substantial strength in the three basic Sea Grant activities: research, education and training, and advisory services. Sea Grant institutional programs that meet the qualifications for Sea Grant College or Sea Grant Regional Consortium status set forth at 15 CFR Part 918 will be so designated by the Secretary.

§ 917.43 Terms and conditions of Sea Grant funding.

No Sea Grant funding may be applied to:

(a)(1) the purchase or rental of any land or (2) the purchase, rental, construction, preservation, or repair of any building, dock, or vessel, except that payment under any such grant or contract may (if approved by the Assistant Administrator for Administration of the National Oceanic and Atmospheric Administration or designee) be applied to the purchase, rental, construction, preservation, or repair of non-self-propelled habitats, buoys, platforms, and other similar devices or structures, or to the rental of any research vessel which is used in direct support of activities under any Sea Grant program or project.

(b) In addition, Sea Grant funding under the Sea Grant Matched Funding Program will be subject to the limitation that the total amount which may be obligated within any one state to persons under the Sea Grant Matched Funding Program in any fiscal year shall not exceed an amount equal to 15 percent of the funds appropriated for the Sea Grant Matched Funding Program.

(c) Any person who receives or utilizes Sea Grant funding shall keep the records required by OMB Circular A-110, "Grant and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and by NOAA General Provision, implementing OMB Circular A-110, by OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," including records that fully disclose the amount and disposition by the recipient of such proceeds, the total cost of the program or project in which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for three years after the completion of such a program or project. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaulation, to any books, documents, papers, and records of receipt which, in the opinion of the Secretary or the Comptroller General, may be related or pertinent to such grants and contracts.

PART 918—SEA GRANTS

Sec.
918.1 Introduction.
918.2 Definitions.
918.3 Eligibility, qualifications, and responsibility of a Sea Grant College.
918.4 Duration of Sea Grant College designation.
918.5 Eligibility, qualifications, and responsibilities—Sea Grant Regional Consortia.
918.6 Duration of Sea Grant Regional Consortium designation.
918.7 Application for designation.

AUTHORITY: Sec. 207, National Sea Grant College Program Act, as amended (Pub. L. 94-461, 33 U.S.C. 1121, et seq.).

SOURCE: 44 FR 75054, Dec. 18, 1979, unless otherwise noted.

§ 918.1 Introduction.

Pursuant to section 207 of the National Sea Grant College Program Act, as amended (Pub. L. 94-461, 33 U.S.C. 1121 et seq.), herein referred to as the Act, the following guidelines establish the procedures by which organizations can qualify for designation as Sea Grant Colleges or Sea Grant Regional Consortia, and the responsibilities required of organizations so designated.

§ 918.2 Definitions.

(a) *Marine environment.* The term "Marine Environment" means any or all of the following: the coastal zone, as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil and waters of the territorial sea of the United States, including the Great Lakes; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the Outer Continental Shelf.

(b) *Ocean, Great Lakes, and coastal resources.* The term "ocean, Great Lakes, and coastal resources" means any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment. Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient-rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, aesthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

(c) *Person.* The term "Person" means any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, or laboratory); or any State, political subdivision of a State, or agency or officer thereof.

(d) *Sea Grant College.* The term "Sea Grant College" means any public or private institution of higher education or confederation of such institutions which is designated as such by the Secretary under section 207 of the National Sea Grant Program Act. Included in this term are all campuses (or other administrative entities) of a designated Sea Grant College, working through the established management structure of the Sea Grant College.

(e) *Sea Grant Program.* The term "Sea Grant Program" means any program which:

(1) Is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or State or local agency; and

(2) Includes two or more Sea Grant projects involving one or more of the following activities in fields related to ocean, Great Lakes, and coastal resources:

(i) Research,

(ii) Education and training, and

(iii) Advisory services.

(f) *Sea Grant project.* A Sea Grant project is any separately described activity which has been proposed to the National Sea Grant College Program, and has subsequently been approved.

(g) *Sea Grant Regional Consortium.* The term "Sea Grant Regional Consortium" means any association or other alliance of two or more persons as defined above (other than individuals) established for the purpose of pursuing programs in marine research education, training, and advisory services on a regional basis (i.e., beyond the boundaries of a single state) and which is designated as a consortium by the Secretary under section 207 of the National Sea Grant Program Act.

(h) *Field related to Ocean, Great Lakes, and coastal resources.* The term "field related to Ocean, Great Lakes, and coastal resources" means any discipline or field (including marine sciences and the physical, natural, and biological sciences, and engineering, included therein, marine technology, education, economics, sociology, communications, planning law, international affairs, public administration, humanities, and the arts) which is concerned with, or likely to improve the understanding, assessment, development, utilization, or conservation of, ocean, Great Lakes, and coastal resources.

§ 918.3 Eligibility, qualifications, and responsibility of a Sea Grant College.

(a) To be eligible for designation as a Sea Grant College, the institution of higher education or confederation of such institutions must have demonstrated a capability to maintain a high quality and balanced program of research, education, training, and advisory services in fields related to ocean, Great Lakes, and coastal resources for a minimum of three years, and have received financial assistance as an Institutional program under either section 205 of the National Sea Grant College Program Act or under section 204(c) of the earlier National Sea Grant College and Program Act of 1966.

(b) To be eligible for designation as a Sea Grant College, the candidate institution or confederation of institutions must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, NOAA's Office of Sea Grant, and other experts named by NOAA. As a result of this review, the candidate must be rated highly in all of the following qualifying areas:

(1) *Leadership.* The Sea Grant College candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its state and region.

(2) *Organization.* The Sea Grant College candidate must have created the management organization to carry on a viable and productive Sea Grant Program, and must have the backing of its administration at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance.* The Sea Grant College candidate's program must be relevant to local, State, regional, or National opportunities and problems in the marine environment. Important factors in evaluating relevance are the need for marine resource emphasis and the extent to which capabilities have been developed to be responsive to that need.

(4) *Programmed team approach.* The Sea Grant College candidate must have a programmed team approach to the solution of marine problems which includes relevant, high quality, multidisciplinary research with associated educational and advisory services capable of producing identifiable results.

(5) *Education and training.* Education and training must be clearly relevant to National, regional, State and local needs in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include pre-college, college, post-graduate, public and adult levels.

(6) *Advisory services.* The Sea Grant College candidate must have a strong program through which information, techniques,and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(7) *Relationships.* The Sea Grant College candidate must have close ties with Federal agencies. State agencies and administrations, local authorities, business and industry, and other educational institutions. These ties are: (i) To ensure the relevance of its programs, (ii) to give assistance to the broadest possible audience, (iii) to involve a broad pool of talent in providing this assistance (including universities and other administrative entities outside the Sea Grant College), and (iv) to assist others in developing research and management competence. The extent and quality of an institution's relationships are critical factors in evaluating the institutional program.

(8) *Productivity.* The Sea Grant College candidate must have demonstrated the degree of productivity (of research results, reports, employed students, service to State agencies and industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(9) *Support.* The Sea Grant College candidate must have the ability to obtain matching funds from non-Federal sources, such as state legislatures, university management, state agencies, business, and industry. A diversity of matching fund sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant College candidate will act in accordance with the following standards relating to its continuing responsibilities if it should be designated a Sea Grant College:

(1) Continue pursuit of excellence and high performance in marine research, education, training, and advisory services.

(2) Provide leadership in marine activities including coordinated planning and cooperative work with local, state, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant universities.

(3) Maintain an effective management framework and application of institutional resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the institution and the state.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant programs.

§ 918.4 Duration of Sea Grant College designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the goals of the Act. Continuation of the Sea Grant College designation is contingent upon the institution's ability to maintain a high quality performance consistent with the requirements outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate a designation as a Sea Grant College.

§ 918.5 Eligibility, qualifications, and responsibilities—Sea Grant Regional Consortia.

(a) To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must provide, in significant breadth and quality, one or more services in the areas of research, education, and training, or advisory service in fields related to ocean, Great Lakes, and coastal resources. Further, it is essential that the candidate Sea Grant Consortium be required to provide all three services as soon as possible after designation. Further, such association or alliance must demonstrate that:

(1) It has been established for the purpose of sharing expertise, research, educational facilities, or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services in any field related to ocean, Great Lakes, and coastal resources; and

(2) It will encourage and follow a regional multi-State approach to solving problems or meeting needs relating to ocean, Great Lakes, and coastal resources, in cooperation with appropriate Sea Grant Colleges, Sea Grant Programs and other persons in the region.

(b) Although it is recognized that the distribution of effort between research, education, training, and advisory services to achieve appropriate balance in a Sea Grant Regional Consortium may differ from a Sea Grant College, sustained effort in all of these areas is, nonetheless, an essential requirement for retention of such designation. To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, the Office of Sea Grant, and other experts. Further, the candidate must be rated highly in all of the following qualifying areas which are pertinent to the Consortium's program:

(1) *Leadership.* The Sea Grant Regional Consortium candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its region.

(2) *Organization.* The Sea Grant Regional Consortium candidate must have created the management organization to carry on a viable and productive multidisciplinary Sea Grant Program and have the backing of the administrations of its component organizations at a sufficiently high level to

fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance.* The Sea Grant Regional Consortium candidate's Sea Grant Program must be relevant to regional opportunities and problems in the marine environment. Important factors in evaluating relevance are the extent and depth of the need of a region for a focused marine resource emphasis and the degree to which the candidate has developed its capability to be responsive to that need.

(4) *Education and training.* Education and training must be clearly relevant to regional needs and must be of high quality in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include precollege, college, post-graduate, public and adult levels.

(5) *Advisory services.* The Sea Grant Regional Consortium candidate must have a strong program through which information techniques, and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(6) *Relationships.* The Sea Grant Regional Consortium candidate must have close ties with federal agencies, state agencies and administrations, regional authorities, regional business and industry, and other regional educational institutions. These regional ties are: (i) To ensure the relevance of programs, (ii) to generate requests for such assistance as the consortium may offer, and (iii) to assist others in developing research and management competence. The extent and quality of a candidate's relationships are critical factors in evaluating the proposed designation.

(7) *Productivity.* The Sea Grant Regional Consortium candidate must have demonstrated a degree of productivity (of research results, reports, employed students, service to regional agencies, industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(8) *Support.* The Sea Grant Regional Consortium candidate must have the ability to obtain matching funds from non-Federal sources, such as State legislatures, university management, State agencies, and business and industry. A diversity of matching funds sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant Regional Consortium candidate will act in accordance with the following standards relating to its continuing responsibilities as a Sea Grant Regional Consortium:

(1) Continue pursuit of excellence and high performance in marine research education, training, and advisory services.

(2) Provide regional leadership in marine activities including coordinated planning and cooperative work with local, State, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant organizations.

(3) Maintain an effective management framework and application of organizational resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the consortium and the region.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant program.

§ 918.6 Duration of Sea Grant Regional Consortium designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the goals of the Act. Continuation of the Sea Grant Regional Consortium designation is contingent upon the alliance's ability to maintain a high quality performance consistent with the standards outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate the designation as a Sea Grant Regional Consortium.

§ 918.7 Application for designation.

(a) All applications for initial designation as a Sea Grant College or a Regional Consortium should be addressed to the Secretary of Commerce and submitted to the Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration. The application should contain an outline of the capabilities of the applicant and the reasons why the applicant believes that it merits designation under the guidelines contained in this regulation. Upon receipt of the application, the Director will present the institution's case to the Sea Grant Review Panel for evaluation. The Panel's recommendation will be forwarded to the Secretary for final action.

(b) An existing Sea Grant College or Regional Consortium may also apply as in paragraph (a) of this section, for a change in the scope of designation to include or exclude other administrative entities of the institution or association. If approved by the Secretary such included (excluded) administrative entities shall share (lose) the full rights and responsibilities of a Sea Grant College or Regional Consortium.

PART 921—NATIONAL ESTUARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Sec.
921.1 Mission and goals.
921.2 Definitions.
921.3 National Estuarine Sanctuary Biogeographic Classification Scheme and Estuarine Typologies.
921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

Sec.

Subpart B—Preacquisition: Site Selection and Management Plan Development

921.10 General.
921.11 Site selection.
921.12 Management Plan development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

921.20 General.
921.21 Initial acquisition and development awards.

Subpart D—Sancturay Designation and Subsequent Operation

921.30 Designation of National Estuarine Sanctuaries.
921.31 Supplemental acquisition and development awards.
921.32 Operation and management: Implementation of the Management Plan.
921.33 Boundary changes, Amendments to the Management Plan, and addition of multiple-site components.
921.34 Program evaluation.
921.35 Withdrawal of designation.

Subpart E—Research Funds

921.40 General.
921.41 Categories of potential research projects; evaluation criteria.

Subpart F—General Financial Assistance Provisions

921.50 Application information.
921.51 Allowable costs.
921.52 Amendments to financial assistance awards.
APPENDIX 1—BIOGEOGRAPHIC CLASSIFICATION SCHEME
APPENDIX 2—TYPOLOGY OF NATIONAL ESTUARINE AREAS

AUTHORITY: Sec. 315(1), Pub. L. 92-583, as amended; 86 Stat. 1280 (16 U.S.C. 1461(1)).

SOURCE: 49 FR 26510, June 27, 1984, unless otherwise noted.

Subpart A—General

§ 921.1 Mission and goals.

(a) The mission of the National Estuarine Sanctuary Program is the establishment and management, through Federal-state cooperation, of a national system of estuarine sanctuaries representative of the various regions and estuarine types in the United States. Estuarine sanctuaries will be established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program for carrying out this mission are:

(1) Enhance resource protection by implementing a long-term management plan tailored to the site's specific resources;

(2) Provide opportunities for long-term scientific and educational programs in estuarine areas to develop information for improved coastal decisionmaking;

(3) Enhance public awareness and understanding of the estuarine environment through resource interpretive programs; and

(4) Promote Federal-state cooperative efforts in managing estuarine areas.

(c) To assist the states in carrying out the Program's goals in an effective manner, the National Oceanic and Atmospheric Administration (NOAA) will coordinate a research and education information exchange throughout the national estuarine sanctuary system. As part of this role, NOAA will ensure that information and ideas from one sanctuary are made available to others in the system. The network that will be established will enable sanctuaries to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal and state agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

(d) Multiple uses are encouraged to the degree compatible with the sanctuary's overall purpose as provided in the management plan and consistent with subsections (a) and (b), above. Use levels are set by the individual state and analyzed in the management plan. The sanctuary management plan (see § 921.12) will describe the uses and establishes priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. In general, sanctuaries are intended to be open to the public; low-intensity recreational and interpretive activities are generally encouraged.

(e) Certain manipulative research activities may be allowed on a limited basis, but only if specified in the management plan and only if the activity is consistent with overall sanctuary purposes and the sanctuary resources are protected. Manipulative research activities require the prior approval of the state and NOAA. Habitat manipulation for resource management purposes is not permitted within national estuarine sanctuaries.

(f) While the Program is aimed at protecting natural, pristine sites, NOAA recognizes that many estuarine areas have undergone ecological change as a result of human activities. Although restoration of degraded areas is not a primary purpose of the Program, some restorative activities may be permitted in an estuarine sanctuary as specified in the management plan.

(g) NOAA may provide financial assistance to coastal states, not to exceed 50 percent of all actual costs, to assist in the designation and operation of national estuarine sanctuaries (see section 921.51(e)). Three types of awards are available under the National Estuarine Sanctuary Program. The *preacquisition award* is for site selection and draft management plan preparation. The *acquisition and development award* is intended primarily for land acquisition and construction purposes. The *operation and management award* provides funds to assist in implementing the research, educational, and administrative programs detailed in the sanctuary management plan. Under the Act, the Federal share of funding for a national estuarine sanctuary shall not exceed $3,000,000. At the conclusion of Federal financial assistance, funding for the long-term operation of the sanctuary becomes the responsibility of the state.

(h) Lands already in protected status by another Federal, state, local government or private organization can be included within national estuarine sanctuaries only if the managing entity commits to long-term non-manipulative management. Federal lands already in protected status cannot comprise the key land and water areas of a sanctuary (see § 921.11(c)(3)).

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315(1) of the Act, 16 U.S.C. 1461(1), establishes the National Estuarine Sanctuary Program.

(b) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his/her successor or designee.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1454(4)).

(d) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes, see 16 U.S.C. 1454(7).

(e) "National Estuarine Sanctuary" means and area, which may include all or the key land and water portion of an estuary, and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, set asides as a natural field laboratory to provide long-term opportunities for research, educational, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1454(8)).

§ 921.3 National Estuarine Sanctuary Biogeographic Classification Scheme and Estuarine Typologies.

(a) National estuarine sanctuaries are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Sanctuary System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the Program reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions. Figure 2 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

(a) The National Estuarine Sanctuary Program is intended to provide information to state agencies and other entities involved in coastal zone management decisionmaking pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Sanctuary Program (see § 921.2(e)).

(b) Where feasible, the National Estuarine Sanctuary Program will be conducted in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431-1434), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate ocean waters as marine sanctuaries to protect or restore such areas for their conservation, recreational, ecological, or esthetic values. National marine and estuarine sanctuaries will not overlap, though they may be adjacent.

Subpart B—Preacquisition: Site Selection and Management Plan Development

§ 921.10 General.

(a) A state may apply for a preacquisition award for the purpose of site selection and preparation of documents specified in § 921.12 (draft management plan and environmental impact statement (EIS)). The total Federal share of the preacquisition award may not exceed $50,000, of which up to $10,000 may be used for site selection as described in § 921.11. Financial assistance application procedures are specified in Subpart F.

(b) In selecting a site, a state may choose to develop a multiple-site sanctuary reflecting a diversity of habitats in a single biogeographic region. A multiple-site sanctuary also allows the state to develop complementary research and educational programs within the multiple components of its sanctuary. Multiple-site sanctuaries are treated as one sanctuary in terms of financial assistance and development of an overall management framework and plan. Each individual component of a proposed multiple-site sanctuary shall be evaluated separately under § 921.11(c) as part of the site selection process. A state may propose to establish a multiple-site sanctuary at the time of the initial site selection, or at any point in the development or operation of the estuarine sanctuary, even after Federal funding for the single component sanctuary has expired. If the state decides to develop a multiple-site national estuarine sanctuary after the initial acquisition and development award is made on a single site, the proposal is subject to the requirements set forth in § 921.33. It should be noted, however, that the total funding for a multiple-site sanctuary remains at the $3,000,000 limit; the funding for operation of a multiple-site sanctuary is also limited to the $250,000 standard (see § 921.32(b)).

§ 921.11 Site selection.

(a) A state may use up to $10,000 in Federal preacquisition funds to establish and implement a site selection process which is approved by NOAA.

(b) In Addition to the requirements set forth in Subpart F, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's benefit to the National Estuarine Sanctuary Program relative to the biogeographic classification scheme and typology set forth in § 921.3 and Appendices 1 and 2;

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site should, to the maximum extent possible, be a natural system;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. National estuarine sanctuaries may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced, see § 921.51(e)(2). Importantly, however, NOAA will not approve a site for potential sanctuary status that is dependent upon the inclusion of currently protected Federal lands in order to meet the requirements for sanctuary status (such as key land and water areas). Such lands may only be included within a sanctuary to serve as a buffer or for other ancillary purposes;

(4) The site's importance for research, including proximity to existing research facilities and educational institutions: (*Comment:* NOAA is developing more detailed criteria for selecting potential national estuarine sanctuaries based upon research characteristics. Once these criteria are developed, a notice of their availability will be published in the FEDERAL REGISTER).

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process, the state must seek the views of affected landowners, local governments, other state and Federal agencies, and other parties who are interested in the area(s) being considered for selection as a potential national estuarine sanctuary. After the local government and affected landowners have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting and by NOAA in the FEDERAL REGISTER.

§ 921.12 Management Plan development.

(a) After the selected site is approved by NOAA and the state, the state may request the remainder of the preacquisition funds to develop the draft management plan and environmental impact statement. The request must be accompanied by the information specified in Subpart F and the following programmatic information:

(1) An analysis of the site based on the biogeographic scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted;

(4) A list of all sites considered and a brief statement of the basis for not selecting the non-preferred sites; and

(5) A draft management plan outline (see subsection (b) below) and an outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state roles in sanctuary management during the period of federal funding and expressing the state's long-term commitment to operate and manage the sanctuary.

(b) After NOAA approves the state's request to use the remaining preacquisition funds, the state shall begin developing a draft management plan. The plan will set out in detail:

(1) Sanctuary goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative section including staff roles in administration, research, education/interpretation, and surveillance and enforcement.

(3) A research plan, including a monitoring design;

(4) An interpretive plan (including interpretive, educational and recreational activities);

(5) A plan for public access to the sanctuary;

(6) A construction plan, including a proposed construction schedule, and drawings of proposed developments. If a visitor center, research center or any other facilities are proposed for construction or renovation at the site, a preliminary engineering report must be prepared;

NOTE.—Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64830 (1977)), which is supplied to award recipients.

(7) An acquisition plan identifying the ecologically key land and water areas of the sanctuary, priority acquisitions, and strategies for acquiring these areas. This plan should identify ownership patterns within the proposed sanctuary boundaries; land already in the public domain; an estimate of the fair market value of land to be acquired; the method of acquisition, or the feasible alternatives (including less-than-fee techniques) for the protection of the estuarine area; a schedule for acquisition with an estimate of the time required to complete

the proposed sanctuary; and a discussion of any anticipated problems;

NOTE.—As discussed in § 921.11(c)(3), if protected lands are to be included within the proposed sanctuary, the state must demonstrate to NOAA that the site meets the criteria for national estuarine sanctuary status independent of the inclusion of such protected lands.

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the sanctuary, and a strategy for sanctuary surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions; and

(10) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine sanctuary, and expressing the long-term commitment by the state to maintain effectively the sanctuary after Federal financial assistance ends. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection of the sanctuary. The MOU shall be signed prior to sanctuary designation. If other MOUs are necessary (such as with a federal agency or another state agency), drafts of such MOUs also must be included in the plan.

(c) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on a national estuarine sanctuary proposal, the state shall provide all necessary information to NOAA concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, NOAA will prepare the draft EIS.

(d) Early in the development of the draft management plan and the draft EIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the FEDERAL REGISTER and in local media.

(e) NOAA will publish a FEDERAL REGISTER notice of intent to prepare a DEIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the FEDERAL REGISTER. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed sanctuary. The hearing will be held no sooner than 15 days after appropriate notice by NOAA of the meeting has been given in the principal news media and in the FEDERAL REGISTER. After a 45-day comment period, a final EIS is prepared by NOAA.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.

After NOAA approval of the site, the draft management plan and the draft MOU, and completion of the final EIS, a state is eligible for an acquisition and development award to acquire land and water areas for inclusion in the sanctuary and to construct research and educational facilities in accordance with the draft management plan. The acquisition and development award has two phases. In the initial phase, state performance should work to meet the criteria required for formal sanctuary designation, i.e., acquiring the key land and water areas as specified in the draft management plan and preparing the final plan. These requirements are specified in § 921.30. The initial acquisition and development phase is expected to last no longer than two years after the start of the award. If necessary, a longer time period may be negotiated between the state and NOAA. After the sanctuary is designated, funds may be used to acquire any remaining land and for construction purposes.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in: (1) Acquiring land and water areas to be included in the sanctuary boundaries; (2) minor construction, as provided in paragraphs (b) and (c) of this section; (3) preparing the final management plan; and (4) up to the point of sanctuary designation, for initial management costs, e.g., implementing the NOAA approved draft management plan, preparing the final management plan, hiring a sanctuary manager and other staff as necessary, and for other management-related activities. Application procedures are specified in Subpart F.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted under the initial acquisition and development award. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a)-(c) of this section, construction projects, to be funded in whole or in part under the acquisition and development award, may not be initiated until the sanctuary receives formal designation, see § 921.30.

NOTE.—The intent of these requirements and the phasing of the acquisition and development award is to ensure that substantial progress in acquiring the key land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) Deeds for real property acquired for the sanctuary under acquisition funding shall contain substantially the following provision:

> Title to the property conveyed by this deed shall vest in the [recipient of the CZMA Section 315 award or other Federally-approved entity] subject to the condition that the property shall remain part of the Federally-designated [name of National Estuarine Sanctuary]. In the event that the property is no longer included as part of the sanctuary, or if the sanctuary designation of which it is part is withdrawn, then the National Oceanic and Atmospheric Administration or its successor agency, in conjunction with the State, may exercise any of the following rights regarding the disposition of the property:
>
> (i) The recipient may be required to transfer title to the Federal Government. In such cases, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property; or
>
> (ii) At the discretion of the Federal Government, (a) the recipient may either be directed to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (minus actual and reasonable selling and fix-up expenses, if any, from the sale proceeds); or (b) the recipient may be permitted to retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property.

NOTE.—Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by OMB Circular A-102 Revised, Attachment F.

(f) Prior to submitting the final management plan to NOAA for review and approval, the state should hold a public meeting in the area affected by the estuarine sanctuary. NOAA will publish a notice of the meeting in the FEDERAL REGISTER and in the local media.

Subpart D—Sanctuary Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Sanctuaries.

(a) The AA shall designate an area as a national estuarine sanctuary pursuant to Section 315 of the Act, based upon written findings that the state has met the following conditions:

(1) A final management plan has been approved by NOAA;

(2) Sanctuary construction and access policies, § 921.21(b)-(d), have been followed;

(3) Key land and water areas of the proposed sanctuary, as identified in the management plan, are under state control; and

(4) An MOU between the state and NOAA ensuring a long-term commitment by the state to the sanctuary's effective operation and implementation has been signed.

(b) A notice of designation of a national estuarine sanctuary will be placed in the FEDERAL REGISTER and in the local media.

(c) The term "state control" in § 921.30(a)(3) does not necessarily require that the land be owned by the state in fee simple. Less-than-fee interests and regulatory measures may suffice where the state makes a showing that the lands are adequately controlled consistent with the purposes of the sanctuary.

§ 921.31 Supplemental acquisition and development awards.

After sanctuary designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award for construction and acquiring any remaining land. Application procedures are specified in Subpart F. Land acquisition must follow the procedures specified in § 921.21(e).

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the sanctuary is formally designated, the state may apply for assistance to provide for operation and management. The purpose of this phase in the national estuarine sanctuary process is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the sanctuary after direct Federal support is concluded.

(b) Federal funds of up to $250,000, to be matched by the state, are available for the operation and management of the national estuarine sanctuary. Operation and management awards are subject to the following limitations:

(1) No more than $50,000 in Federal funds per annual award; and

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (i.e., $10,000 maximum per year).

§ 921.33 Boundary changes, amendments to the Management Plan, and addition of multiple-site components.

(a) Changes in sanctuary boundaries and major changes to the final management plan, including state laws or regulations promulgated specifically for the sanctuary, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice including notice in the FEDERAL REGISTER and an opportunity for comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, an environmental assessment may be required. Where public notice is required, NOAA will place a notice in the FEDERAL REGISTER of any proposed changes in sanctuary boundaries or proposed major changes to the final management plan and ensure that a notice is published in the local media.

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine sanctuary after the initial acquisition and development award for a single site has been made. Public notice of the proposed addition in the FEDERAL REGISTER and local media, and the opportunity for comment, in addition to the preparation of either an environmental assessment or environment impact statement on the proposal will be required. An environmental impact statement, if required, will be prepared in accordance with section 921.12 and will also include an administrative framework for the multiple-site sanctuary that describes the complementary research and educational programs within the sanctuary. If NOAA determines, based on the scope of the project and the issues associated with the additional site, that an environmental assessment is sufficient to establish a multiple-site sanctuary, then the state shall develop a revised management plan as described in § 921.12(b). The revised management plan will address the sanctuary-wide goals and objectives and the additional component's relationship to the original site.

§ 921.34 Program evaluation.

(a) Performance during the term of the operation and management award (or under the initial acquisition and development award, if the sanctuary is not designated within two years) will be evaluated annually by the Program Office and periodically in accordance with the provisions of Section 312 of the Act to determine compliance with the conditions of the award and overall progress in implementing the management plan.

(b) To ensure effective sanctuary oversight after the major federal funding expires, the state is required to submit an annual report on the sanctuary. The report should detail program successes and accomplishments in meeting the policies and activities described in the sanctuary management plan. A work plan, detailing the projects to be undertaken the next year to meet the Program goals and the state's role in ongoing sanctuary programs, should also be included. Inadequate annual reports will trigger a full-scale management audit with a site-visit. On a periodic basis, NOAA will also conduct a full-scale Section 312 evaluation with a site visit and public meeting.

§ 921.35 Withdrawal of designation.

(a) Upon a finding by the Program Office through its programmatic evaluation (§ 921.34) that a national estuarine sanctuary is not meeting the mandate of Section 315 of the Act, the national Program goals or the policies established in the management plan, NOAA will provide the state with a written notice of the deficiency. Such a notice will explain the deficiencies in the state's approach, propose a solution or solutions to the deficiency and provide a schedule by which the state should remedy the deficiency. The state shall also be advised in writing that it may comment on the Program Office's finding of a deficiency and meet with Program officials to discuss the finding and seek to remedy the deficiency.

(b) If the issues cannot be resolved within a reasonable time, the Program Office will make recommendation regarding withdrawal of designation to the AA. A notice of intent to withdraw designation, with an opportunity for comment, will be placed in the FEDERAL REGISTER.

(c) The state shall be provided the opportunity for an informal hearing before the AA to consider the Program Office's recommendation and finding of deficiency, as well as the state's comments on and response to the recommendation and finding.

(d) Within 30 day after the informal hearing, the AA shall issue a written decision regarding the sanctuary. If a decision is made to withdraw sanctuary designation, the procedures specified in§ 921.21(e) regarding the disposition of real property acquired with federal funds shall be followed.

Subpart E—Research Funds

§ 921.40 General.

(a) To stimulate high quality research within designated national estuarine sanctuaries, NOAA may fund research on a competitive basis to sanctuaries having an approval final management plan. Research funds are intended to support significant research projects that will lead to enhanced scientific understanding of the sanctuary environment, improved coastal decisionmaking, improved sanctuary management, or enhanced public appreciation and understanding of the sanctuary ecosystem. Research opportunities will be identified in final management plans for national estuarine sanctuaries. Research funds will be used to fill obvious voids in available data, as well as to support creative or innovative projects.

(b) Research funds are provided in addition to any funds available to the state under the operation and management or acquisition and development awards. Research funds must be matched by the state, consistent with § 921.51(e)(iii) ("allowable costs"). Individual states may apply for funding for more than one research project per sanctuary.

§ 921.41 Categories of potential research project; evaluation criteria.

(a) While research funds may be used to start-up long-term projects, they are not intended as a source of continuing funding for a particular project over time. Emphasis will be placed on projects that are also of benefit to other sanctuaries in the system. Proposals for research under the following categories will be considered:

(1) Establishing a Data Base and Monitoring Program (e.g., studies related to gathering and interpreting baseline information on the estuary. Funds are available to establish a data base and monitoring system; however, the long-term support for such a system must be carried out as part of overall sanctuary implementation);

(2) Estuarine Ecology (e.g., studies of the relationships between estuarine species and their environment, studies of biological populations community relationships, studies on factors and processes that govern the biological productivity of the estuary);

(3) Estuarine Processes (e.g., studies on dynamic physical processes that influence and give the estuary its particular physical characteristics, including studies related to climate, patterns of watershed drainage and freshwater inflow, patterns of water circulation within the estuary, and studies on oceanic or terrestrial factors that influence the condition of estuarine waters and bottoms);

(4) Applied Research (e.g., studies designed to answer specific management questions); and

(5) Socioeconomic Research (e.g., studies on patterns of land use, sanctuary visitation, archaeological research).

(b) Proposals for research in national estuarine sanctuaries will be evaluated in accordance with criteria listed below:

(1) Scientific merits;

(2) Relevance or importance to sanctuary management or coastal decision-making;

(3) Research quality (i.e., soundness of approach, environmental consequences, experience related to methodologies);

(4) Importance to the National Estuarine Sanctuary Program;

(5) Budget and Institutional Capabilities (i.e., reasonableness of budget, sufficiency of logistical support); and

(6) In addition, in the case of long-term monitoring projects, the ability of the state or the research grant recipient to support the grant beyond this initial funding.

Subpart F—General Financial Assistance Provisions

§ 921.50 Application information.

(a) The maximum total Federal funding per sanctuary is $3,000,000 for the preacquisition, acquisition and development, and operation and management awards. The research funding under § 921.40 is excluded from this total.

(b) Only a state Governor, or his/her designated state agency, may apply for national estuarine sanctuary financial assistance awards. If a state is participating in the national Coastal Zone Management Progam, the recipient of an award under Section 315 of the Act shall consult with the state coastal management agency regarding the application.

(c) No acquisition and development award may be made by NOAA without the approval of the Governor of the state, or his/her designated agency, in which the land to be acquired is located.

(d) All applications are to be submitted to: Management and Budget Group, Office of Ocean and Coastal Resource Management, National

Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven St., NW., Washington, D.C. 20235.

(e) An original and two copies of the complete application must be submitted at least 120 working days prior to the proposed beginning of the project. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for preacquisition, operation and management, and research awards. The Application for Federal Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in Subpart B (preacquisition), Subpart C and Section 921.31 (acquisition and development), and § 921.32 (operation and management), as applicable. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Appraisals and title information;

(3) Governor's letter approving the sanctuary proposal; and

(4) Written approval from NOAA of the draft or final management plan.

The Standard Form 424 has been approved by the Office of Management and Budget (Approval number 0648-0121) for use through September 30, 1986.

§ 921.51 Allowable costs.

(a) Allowable costs will be determined in accordance with OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", and A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments"; the financial assistance agreement; these regulations; and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the awards period, except as provided under preagreement costs, subsection (d).

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A-102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) *Preacquisition Awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and Development Awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the sanctuary boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. The fair market value of privately donated land, at the time of donation, as establishment by an independent appraiser and certified by a responsible official of the State (pursuant to OMB Circular A-102 Revised, Attachment F) may also be used as match. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standards for Federal Land Acquisitions." Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match. Land, including submerged lands, already in the state's

possession, in a fully-protected status consistent with the purposes of the National Estuarine Sanctuary Program, may be used as match only if it was acquired within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine sanctuary. For state lands not in a fully-protected status (e.g., a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the sanctuary.

A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the estuarine sanctuary.

(3) *Operations and Management Awards; Research Funds.* Cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable.

§ 921.52 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget, or extension of the performance period must be submitted to NOAA on Standard Form 424 (OMB approved number 0748-0121 for use through September 30, 1986) and approved in writing.

APPENDIX 1—BIOGRAPHIC CLASSIFICATION SCHEME

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River).
2. Southern Gulf of Maine (Sheepscot River to Cape Cod).

Virginian

3. Southern New England (Cape Cod to Sandy Hook).
4. Middle Atlantic (Sandy Hook to Cape Hatteras).
5. Chesapeake Bay.

Carolinian

6. Northern Carolinas (Cape Hatteras to Santee River).
7. South Atlantic (Santee River to St. John's River).
8. East Florida (St. John's River to Cape Canaveral).

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south).
10. West Florida (Ft. Jefferson to Cedar Key).

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay).
12. Mississippi Delta (Mobile Bay to Galveston).
13. Western Gulf (Galveston to Mexican border).

Californian

14. Southern California (Mexican border to Point Concepcion).
15. Central California (Point Concepcion to Cape Mendocino).
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River).
18. Washington Coast (Columbia River to Vancouver Island).
19. Puget Sound.

Great Lakes

20. Western Lakes (Superior, Michigan, Huron).
21. Eastern Lakes (Ontario, Erie).

Fjord

22. Southern Alaska (Prince of Wales Island to Cook Inlet).
23. Aleutian Islands (Cook Inlet to Bristol Bay).

Sub-Arctic

24. Northern Alaska (Bristol Bay to Damarcation Point).

Insular

25. Hawaiian Islands.
26. Western Pacific Island.
27. Eastern Pacific Island.

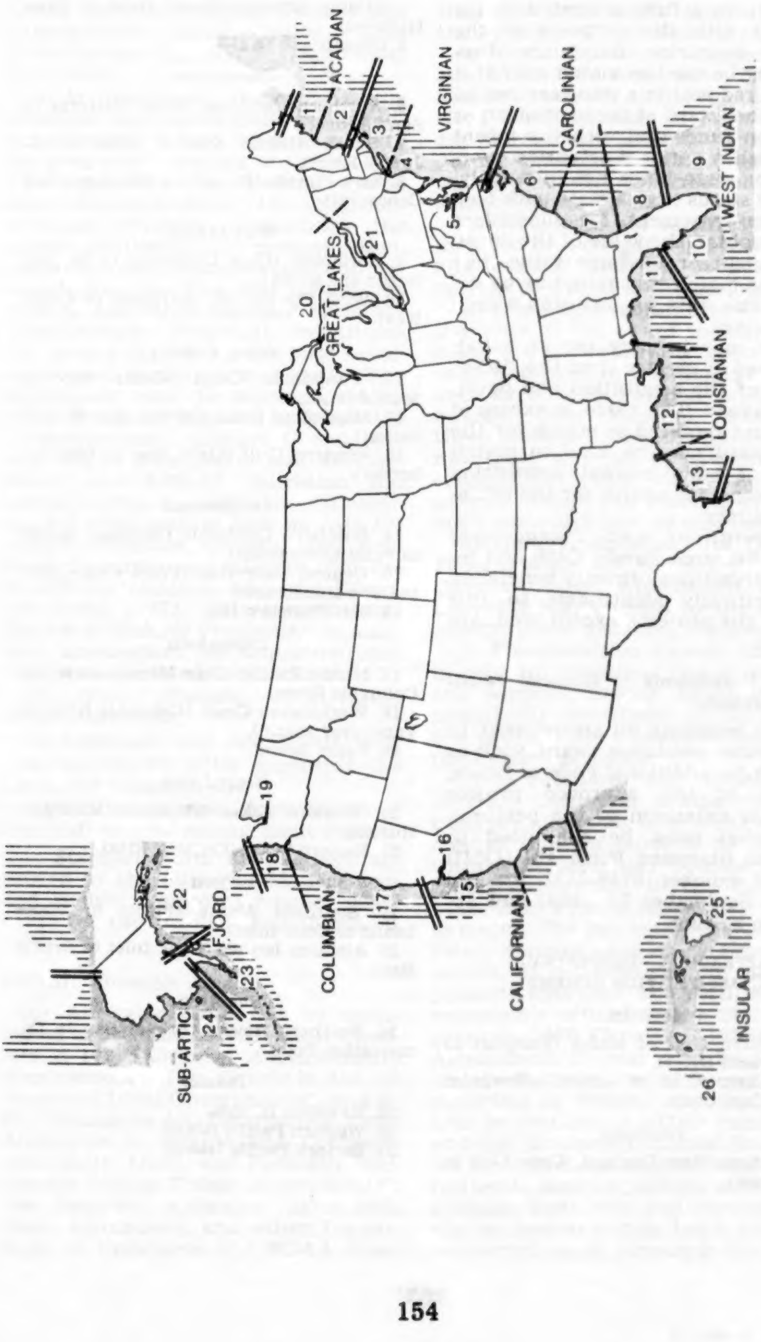
ACADIAN
2
3
4
VIRGINIAN
5
6
CAROLINIAN
7
8
9
WEST INDIAN
10
11
LOUISIANIAN
12
13
GREAT LAKES
20
21
19
18
COLUMBIAN
17
16
15
14
CALIFORNIAN
SUB-ARTIC
24
23
FJORD
22
INSULAR
25
26
27

Figure 1. Biogeographic Regions of the United States.

APPENDIX 2—TYPOLOGY OF NATIONAL ESTUARINE AREAS

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine sanctuaries. Priority will be given to important ecosystem type as yet unrepresented in the sanctuary system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

CLASS I—ECOSYSTEM TYPES

Group I—Shorelands

A. *Maritime Forest-Woodland:* This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features, such as barrier islands and beaches, and may be divided into the following biomes:

1. *Northern Coniferous Forest Biome:* This is an area of predominantly evergeens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white cedar (*Thuja*), with poor development of the shrub and herb layers, but high annual productivity and pronounced seasonal periodicity.

2. *Moist Temperate (Mesothermal) Coniferous Forest Biome:* Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has a relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. *Temperate Deciduous Forest Biome:* This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibt a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distant subdivision of this biome is the *pine edaphic forest* of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. *Broad-leaved Evergreen Subtropical Forest Biomes:* The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. *Coast Shrublands:* This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. *Northern Areas:* Characterized by *Hudsonia*, various erinaceous species, and thickets of *Myrica*, *Prunus*, and *Rosa*.

2. *Southeast Areas:* Floral dominants include *Myrica*, *Baccharis*, and *Ilex*.

3. *Western Areas: Adenostoma*, *Arcotyphylos*, and *Eucalyptus* are the dominant floral species.

C. *Coastal Grasslands:* This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila*, *Agropyron*, and *Calamovilfa*, tall grasses (5 to 8 feet tall), such as *Spartina*, and trees such as the willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Populus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus;*
2. Northeast/West: *Ammophila;*
3. Southeast/Gulf: *Uniola;* and
4. Mid-Atlantic/Gulf: *Spartina patens.*

D. *Coastal Tundra:* This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana*, the lichens *Cetraria* and *Cladonia*, and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus*. Common species on the coastal beach ridges of the high arctic desert include *Dryas intergrifolia* and *Saxifrage oppositifolia*.

This area can be divided into two main subdivisions:

1. *Low Tundra:* characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. *High Tundra:* a bare area except for a scanty growth of lichens and grasses, with underlying ice wedges forming raised polygonal areas.

E. *Coastal Cliffs:* This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. *Coastal Marshes:* These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) tidal, which is periodically flooded by either salt or brackish water; (b) non-tidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. *Coastal Swamps:* These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. *Coastal Mangroves:* This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia racemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. *Intertidal Beaches:* This ecosystem has a distinct biota of microscopic animals, bacteria, and unicelluar algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (Gammaridae), ghost crabs (*Ocypode*), and bivalve molluscs such as the coquina (*Donax*) and surf clams (*Spisula* and *Mactra*).

E. *Intertidal Mud and Sand Flats:* These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflagellates, filamentous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donax*, the scallop *Pecten*, tellin shells *Tellina*, the heart urchin *Echinocardium*, the lug worm *Arenicola*, sand dollar *Dendraster*, and the sea pansy *Renilla*. In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite*, the boring clam *Playdon*, the deep sea scallop *Placopecten*, the quahog *Mercenaria*, the echiurid worm *Urechis*, the mud snail *Nassarius*, and the sea cucumber *Thyone*.

F. *Intertidal Algal Beds:* These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. *Northern Latitude Rocky Shores:* It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Ascophyllum* at the mid-tidal level, and *Laminaria* and other kelp-like algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. *Southern Latitudes:* The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentous green, blue-green, and red algae, and small thalloid brown algae.

3. *Tropical and Subtropical Latitudes:* The intertidal in this region is very reduced and contains numerous calcareous algae such as *Porolithon* and *Lithothamnion*, as well as green algae with calcareous particles such as *Halimeda*, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. *Subtidal Hardbottoms:* This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as kelp, may also be found.

B. *Subtidal Softbottoms:* Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. *Subtidal Plants:* This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

CLASS II—PHYSICAL CHARACTERISTICS

Group I—Geologic

A. *Basin Type:* Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. *Exposed Coast:* Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shorefront.

2. *Sheltered Coast:* Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. *Bay:* Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. *Embayment:* A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. *Tidal River:* The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. *Lagoon:* Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. *Perched Coastal Wetlands:* Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. *Anchialine Systems:* These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection to the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthic algae such as *Rhizoclonium*, the mineral encrusting *Schizothrix*, and the vascular plant *Ruppia maritima*. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks *Theodoxus neglectus* and *T. cariosus*, the small red shrimp *Metabetaeus lohena* and *Halocaridina rubra*, and the fish *Eleotris sandwicensis* and *Kuhlia sandvicensus*. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. *Basin Structure:* Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. *Coastal plains estuary:* Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. *Fjord:* Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume,

river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800 m to 1200 m, while sill depths usually range from 40 m to 150 m.

3. *Bar-bounded Estuary:* These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. *Tectonic Estuary:* These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding, or movement of the earth's bedrock, often with a large inflow of freshwater.

5. *Volcanic Estuary:* These coastal bodies of open water, a result of volcanic processes, are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. *Inlet Type:* Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types of inlets:

1. *Unrestricted:* An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receive the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. *Restricted:* Restrictions of estuaries can exist in many forms: bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or *bore.* Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary.

3. *Permanent:* Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea. Sedimentation and deposition are minimal.

4. *Temporary (Intermittent):* Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea and sound waters, the frequency of storms, and the amount of littoral transport.

D. *Bottom Composition:* The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. *Sand:* Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shores and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. *Mud:* At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silt, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. *Rock:* Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. *Oyster shell:* Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. *Circulation:* Circulation patterns are the result of the combined influences of freshwater flow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. *Stratified:* This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. *Non-stratified:* Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. *Lagoonal:* An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. *Tides:* This is the most important ecological factor in an estuary, as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as *datum*. The tides, although complex, falls into three main categories:

1. *Diurnal:* This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. *Semidiurnal:* This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. *Wind/Storm Tides:* This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. *Freshwater:* According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. *Surface water:* This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. *Subsurface water:* This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. *Vadose water:* This is water in the soil above the water table. Its volume with respect to the soil, is subject to considerable fluctuation.

b. *Groundwater:* This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land, being high below hills and sloping into valleys.

Group III—Chemical

A. *Salinity:* This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. *Positive estuary:* This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. *Negative estuary:* This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. *Salinity zones (expressed in ppt):*

a. *Hyperhaline*—greater than 40 ppt.

b. *Euhaline*—40 ppt to 30 ppt.

c. *Mixohaline:* 30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. *Limnetic:* Less than 0.5 ppt.

B. *pH Regime:* This is indicative of the mineral richness of estuarine waters and fall into three main categories:

1. *Acid:* Waters with a pH of less than 5.5.

2. *Circumneutral:* A condition where the pH ranges from 5.5 to 7.4.

3. *Alkaline:* Waters with a pH greater than 7.4.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Sec.
922.1 Mission and goals.
922.2 Definitions.
922.10 Effect of national marine sanctuary designation.

Subpart B—Site Evaluation List (SEL)

922.20 Purpose of the Site Evaluation List.
922.21 Effect of placement on the SEL or selection as an active candidate.
922.22 SEL time frame and consideration of new sites.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

922.30 Selection of active candidates.
922.31 Designation process.
922.32 Coordination with States.

Subpart D—Enforcement

922.40 Applicable procedures.
APPENDIX 1—NATIONAL MARINE SANCTUARY SITE IDENTIFICATION AND SELECTION CRITERIA

AUTHORITY: Title III, Pub. L. 95-532, as amended (16 U.S.C. 1431-1434).

SOURCE: 48 FR 24301, May 31, 1983, unless otherwise noted.

Subpart A—General

§ 922.1 Mission and goals.

(a) The mission of the National Marine Sanctuary Program (Program) is the establishment of national marine sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. Designated sanctuaries should be illustrative of the nation's marine areas. Decisions to designate areas as national marine sanctuaries are based on an evaluation of the area's intrinsic natural resource and human use values and the impacts of various activities on these values.

NOTE: Section 302(a) of the Act permits the Secretary of Commerce, with the approval of the President, to designate ocean areas as marine sanctuaries for "the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values." Decisions to designate an area are therefore based on the area's intrinsic values. For purposes of analysis, these regulations use the term "natural resource and human use values" to equate to the statutory language of "conservation, recreation, ecological, or esthetic values." The term "natural resource" value is synonymous with the "ecological" values referred to in the statute. The statute's terms "conservation," "recreational," and "esthetic" values are covered in the regulations as "human use values." The criteria for sanctuary identification and selection which are categorized into natural resource and human use values, are therefore based on the statute's terms "conservation, recreational, ecological, or esthetic values."

(b) The goals of the Program are to carry out this mission by designating national marine sanctuaries to:

(1) Enhance resource protection through the implementation of a comprehensive, long-term multiple use management plan tailored to the specific resources;

(2) Promote and coordinate research to expand scientific knowledge of significant marine resources to improve management decisionmaking in marine sanctuaries;

(3) Enhance public awareness, understanding, and wise use of the marine environment through public interpretive and recreational programs; and

(4) Provide for multiple compatible public and private use of special marine areas.

(c) The National Marine Sanctuary Program will seek maximum public participation throughout all the stages that may lead to the designation of a sanctuary.

(d) Sanctuary size, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure the sanctuary's effective management. Sanctuaries will be limited to relatively small, geographically discrete marine areas. NOAA intends that the maximum size will not exceed that of the largest existing marine sanctuary at the time of the effective date of these regulations.

NOTE: The criteria for active candidate selection explicitly includes size considerations in § 922.30(b)(4). The SEL selection criteria also includes size considerations under "Management Concerns" (Appendix 1.A. IV.).

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434.

(b) "Active Candidate" means a site selected by NOAA from the Site Evaluation List for further consideration leading to sanctuary designation.

(c) "Affected State" means any State in which a proposed marine sanctuary includes waters lying within the territorial limits of that State or superjacent to the subsoil and seabed within the seaward boundary of that coastal State.

(d) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce.

(e) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce, or his/her successor or designee.

(f) "Human use values", as used in these regulations, equates to the statutory language of "conservation," "recreational," and "esthetic" values (section 302(a)).

(g) "Marine areas" means those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters.

(h) "National marine sanctuary" means a marine area, as defined above in paragraph (g), of this section which is designated for the purpose of preserving or restoring such area for its conservation, recreational, ecological or esthetic values, as provided by section 302(a) of the Marine Protection, Research, and Sanctuaries Act of 1972.

(i) "Natural resource values" refers to the "ecological" values specified in the Act (section 302(a)).

(j) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State, local or regional unit of government.

(k) "Secretary" means the Secretary of the United States Department of Commerce.

(l) "Site Evaluation List" (SEL) means that list of high natural resource and human use value sites established by the AA as qualifying for further evaluation as national marine sanctuaries.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a national marine sanctuary, and the management plan implementing it (including regulations, if applicable), are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States, and the management plan implementing it applies to foreign citizens only to the extent consistent with recognized principles of international law or otherwise authorized by international agreement.

Subpart B—Site Evaluation List (SEL)

§ 922.20 Purpose of the Site Evaluation List.

(a) The List of Recommended Areas (LRA) is abolished. Sites on the prior LRA have no further status under these regulations, unless the site has been reselected and placed on the Site Evaluation List (SEL), as provided in § 922.22.

(b) In place of the LRA, the Assistant Administrator (AA) will establish a Site Evaluation List comprising the most highly qualified marine sites identified and recommended by the regional resource evaluation teams in accordance with the Program's mission and goals set forth in § 922.1 and the site identification and selection criteria described in Appendix 1, which is incorporated into these regulations.

NOTE: Procedures for SEL site identification and description of the regional resource evaluation teams (teams) are discussed in Chapter III.B of the Program Development Plan (PDP). The site identification criteria used by the teams and the criteria for SEL selection by NOAA are the same and are provided in Appendix 1. The teams' identification of sites for the SEL was based primarily on the area's natural resource values and human use values (See Appendix 1.A I and II). Sites recommended to NOAA for inclusion on the SEL were accompanied by a written analysis of the sites' natural resources and human use values. Sites from the Alaskan region are not included in the current SEL. NOAA's selection of sites for the SEL will be based on the area's natural resource and human use values, the potential activity impacts, and management concerns, including to the extent feasible, a preliminary consideration of the economic effects of sanctuary designation. (See Appendix 1.A. III and IV).

(c) After a preliminary analysis of the sites based on the criteria in Appendix 1, NOAA will publish a notice of availability of sites proposed for listing on the SEL in the FEDERAL REGISTER. These sites will be subject to a ninety-day comment period. At the conclusion of the comment period, NOAA will publish the final SEL in the FEDERAL REGISTER, based on the selection criteria and the public comments. For each site on the SEL, NOAA will prepare a written analysis of the site describing its values relative to the selection criteria in Appendix 1. Such analysis becomes part of the administrative record for that site.

(d) The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered.

§ 922.21 Effect of placement on the SEL or selection as an active candidate.

Placement of sites on the SEL or selection for further consideration as active candidates does not subject such sites to any regulatory controls under Federal law. Such regulations may only be established after designation, as provided under § 922.31.

§ 922.22 SEL time frame and consideration of new sites.

(a) As sites are designated as marine sanctuaries or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL. Sites remaining on the SEL after a 5 year period will be reevaluated.

(b) If after the 5-year reevaluation, it is determined that a new SEL is necessary, notice of the initiation of a new SEL identification process will be published in the FEDERAL REGISTER at least twelve (12) months in advance. NOAA will reevaluate the prior SEL process, including the team approach, and determine, after public comment, how to design and implement a new site selection process.

(c) Unless a new identification process is established as provided in paragraph (b) of this section, the AA will consider future recommendations of potential sanctuary sites only if such sites are important new discoveries or if substantial new information previoulsy unavailable establishes the national significance of a known site. NOAA will determine, in consultation with appropriate scientists, resource managers, and other interested parties, and after public review, whether such sites meet the selection criteria specified in Appendix 1. Qualified sites will be placed on the Site Evaluation List for further evaluation as national marine sanctuaries, consistent with the procedures set forth in these regulations.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) Only a limited number of sites at one time will be selected from the SEL as active candidates and further evaluated for sanctuary designation.

(b) The AA will select sites from the SEL for Active Candidate consideration based on the evaluation contained in the written analysis developed in accordance with § 922.20(c), as well as the following additional factors:

(1) A primary reason for considering a site for marine sanctuary designation is the area's high natural resource and human use values. When selecting an active candidate, NOAA considers the site's relative contribution to the Program's mission and goals;

(2) A consideration of the immediacy of need for sanctuary designation based on the present or potential threats to resources, and the vulnerability of the resources. Consideration will also will be given to the cumulative effect of various human activities that individually may be insignificant.

(3) An evaluation of the benefits to be derived from sanctuary designation, including an assessment of the site's natural resource and human use values, the adequacy of existing management or regulatory regimes for protecting these resources, and the effectiveness of NOAA's proposed management program.

(4) A consideration of the present feasibility of sanctuary designation in light of the sanctuary's size, requirements for managing the site, program staffing, and fiscal constraints; and

(5) An initial consideration of the economic impacts and benefits of sanctuary designation, including a consideration of the range of public and private uses which may be consistent with sanctuary designation.

(c) Before selecting a site as an active candidate, the AA shall undertake preliminary consultation on the considerations described in paragraph (b) of this section with relevant local, state, and Federal government agencies and appropriate regional fishery management councils. The AA also shall request comments from the public and any relevant international agencies. NOAA's written analysis described in § 922.20(c) will be provided for review. Notice of such preliminary consultation shall be published in the FEDERAL REGISTER and in newspapers in the area(s) of local concerns.

(d) Within 180 days of initiating preliminary consultation, the AA shall determine whether to select the site as an active candidate and publish a notice of this determination in the FEDERAL REGISTER. If the site is not selected, a short statement of the reasons for the negative determination shall be specified in the notice.

§ 922.31 Designation process.

(a) After selecting a site as an active candidate, the AA shall prepare a draft designation document, including the terms of the designation, and draft management plan to implement the designation in consultation with relevant Federal, state, and local agencies, Regional Fishery Management Council members, and other interested persons. Management plans generally shall include sections on: Goals and objectives, management responsibilities, resource studies, interpretive and educational programs, public and private uses consistent with sanctuary designation, and regulations (where applicable). A draft environmental impact statement (DEIS) will be prepared on the designation document and management plan, including draft regulations if applicable. The Plan and the EIS will be prepared in as timely a manner as possible allowing for maximum public input. The time period between active candidate selection and recommendation of the site to the Secretary for designation is not to exceed three (3) years, unless the AA determines that additional time is needed for public discussion.

(b) The terms of designation shall include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, or esthetic values; and the types of activities that will be subject to regulation in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which the original designation was made. If regulations are promulgated, they shall be consistent with and implement the terms of the designation. Regulations relating to activities under the jurisdiction of one or more other Federal agencies will be developed in consultation with these agencies. All amendments to these regulations must remain consistent with the designation.

(c) Early in the development of the sanctuary documents and the DEIS, public meetings shall be held in the area or areas most affected to solicit public and government agency input on the significant issues related to the proposed action.

(d) The AA will publish the draft designation document and a summary of the management plan including the draft regulations, where applicable, in the FEDERAL REGISTER. The FEDERAL REGISTER notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS. Not less than 30 days after publication of the applicable documents, the AA shall hold at least one public hearing in the area or areas most affected by the proposed designation in accordance with section 302(e) of the Act.

NOTE: Section 302(e) of the Act provides that before a sanctuary is designated, public hearings must be held in the coastal areas which would be most directly affected by such designation. The purpose of the hearings is to receive and give proper consideration to the views of any interested party.

(e) After publication of a final environmental impact statement, and final consultation with all appropriate Federal agencies, including the Departments of State, Defense, the Interior, Transportation, Energy, and the Environmental Protection Agency, the Secretary shall transmit the proposed designation to the President for approval. Where sites include state waters, the applicable documents will be sent to the Governor of the State for final consultation, as provided under paragraph (h) (1) of this section.

(f) The AA shall announce the designation of a Sanctuary and publish the designation document and implementing regulations in the FEDERAL REGISTER.

(g) A designation shall become effective unless either: (1) The governor of any affected State, as defined in § 922.2(c) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in paragraph (b), of this section are unacceptable to the state, in which case those terms certified as unacceptable will not be effective in the waters described in § 922.2(c) until the Governor withdraws his/her certification of unacceptability; or

(2) Both Houses of Congress adopt a concurrent resolution consistent with section 302(h) of the Act, within sixty calendar days of continuous session of Congress after the date on which the designation was transmitted, which disapproves the designation or any of its terms described in paragraph (b) of this section.

(h) After the designation becomes effective, and where essential to prevent immediate, serious and irreversible damage to the resources of a sanctuary, activities other than those listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which time an appropriate amendment of the terms of the Designation will be sought by the Secretary.

NOTE: Specific emergency procedures will be provided in the regulations implementing individual sanctuaries.

§ 922.32 Coordination with States.

(a) The AA shall make every effort to consult and cooperate with affected states throughout the entire national marine sanctuary review and designation process. In particular the AA shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate, pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with an approved State Coastal Zone Management Program. For purposes of consistency review by States with federally-approved coastal management programs, designation of a national marine sanctuary is deemed to be a Federal activity which directly affects the State's coastal zone and must be undertaken in a manner consistent to the maximum extent practicable as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR Part 930 *et seq.*

(2) Ensure that any relevant state agency is consulted prior to holding any public meeting pursuant to

§ 922.31(d) or public hearing pursuant to § 922.31(e).

(3) Provide the Governor an opportunity to certify the designation as unacceptable as specified in § 922.31(h)(1).

(b) In accordance with section 302(f)(4) of the Act, where the need arises and a state agency possesses appropriate law enforcement capabilities that could assist the AA in carrying out the Act's responsibilities, state law enforcement officers may be deputized as Federal law enforcement agents and authorized to enforce those provisions of the Act and applicable regulations for the specific sanctuary.

Subpart D—Enforcement

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.273), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219), and the seizure and forfeiture procedures set 50 FR 12781 (to be codified at 15 CFR Part 904, Subpart F).

[50 FR 12785, Apr. 1, 1985]

APPENDIX 1—NATIONAL MARINE SANCTUARY SITE IDENTIFICATION AND SELECTION CRITERIA

During the summer of 1981, the National Marine Sanctuary Program draft Site Identification and Selection Criteria were reviewed and refined by three marine scientists: Drs. Walter H. Adey, Rezneat M. Darnell, and G. Carlton Ray. Taking their recommendations into consideration, the criteria presented below were developed.

The criteria are directly related to the Program's mission and goals, see § 922.1. The criteria are grouped into four categories: (1) Natural resource values; (2) human use values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the Program.

The site identification and selection process is discussed in detail in the PDP, chapter III. The regional resource evaluation teams (teams), convened to recommend to NOAA areas for SEL consideration, focused on the (1) natural resource value and (2) human use value criteria (represented in sections I and II, below). These criteria are designed to insure that sites recommended to NOAA for SEL consideration have high natural resource and human use values.

In selecting sites for the SEL, NOAA also considers to the extent such information on the site is available, potential activity impacts and management concerns (as presented in sections III and IV, of this appendix). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of a site as not qualified for sanctuary status. [At the SEL stage NOAA's prime focus is on the site's natural resource and human use values.] The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Act requires that sanctuaries be designated based on the site's "conservation, recreational, ecological, or esthetic values" (section 302(a)). Other, more specific issues are factored into NOAA's decision whether to select a site as an active candidate (see Subpart C of the regulations).

I. Natural Resource Values

A. *Subregional Representation*

The area under consideration is representative of the biogeographic subregion in which it is located (Reference: Sanctuary Program Classification System in the PDP).

Examples: This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

B. *Community Representation*

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (i.e., on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

Examples: (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and gradation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a varie-

ty of ecological communities associated with the east Florida reef tract.

C. *Biological Productivity*

The area under consideration is significant in relation to its level of primary and/or secondary production.

Examples: (1) East Breaks at the edge of the outer continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provide energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California Current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

Note: This example also meets Criterion I.F.)

(4) In many cases, coral reefs are not only energetically self-sustaining (i.e., they produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (i.e., products that are imported and conserved).

D. *Biotic Character/Species Representation*

The area under consideration is of special interest because it supports:

(1) Ecologically limited species;

(2) Ecologically important species; or

(3) Unique species associations or biological assemblages.

Examples: (1) This criterion would apply to marine habitat areas upon which ecologically limited species (e.g., threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands National Marine Sanctuary which supports one of the largest and most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin, abalone, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central texas.

E. *Species Maintenance*

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migration areas.

Examples: (1) The waters off the Point Reyes-Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California sea lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

F. *Ecosystem Structure/Habitat Features*

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

Examples: (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing ofter have unique physical and ecological characteristics, high production, and species diversity/population densities which are ofter greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of Gulf Steam/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

Note: This example also meets Criterion I.C.)

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts,

varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

II. Human-Use Values

A. *Fishery Resources of Recreational Importance*

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

B. *Fishery Resources of Commercial Importance*

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

C. *Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing*

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

Examples: (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Point Reyes-Farallon Islands National Marine Sancturaies provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and snorkeling enthusiasts from all over the world.

(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

D. *Research Opportunity*

The area under consideration provides exceptional opportunities for research in marine science and resource management.

Examples: (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to fisheries, marine mammals, seabirds and those related to development and use of marine resources.

E. *Interpretive Opportunity*

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

Examples: (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems, including open ocean, fringing coral reefs, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond tradition educational tools, such as brochures and pamphlets.

F. *Historical, Archaeological or Paleontological*

The area under consideration contains (or is likely to contain) submerged remnants of past life that are of special historical, cultural or paleontological value.

Examples: (1) This criterion would apply to marine areas where known or possible shipwrecks, armaments, or other maritime relics occur and where protection is desirable to conserve or restore esthetic values and to advance the goal of the United States antiquities laws to protect historical resources.

(2) This criterion would apply to marine areas containing, or suspected of containing, remnants of historic human occupation by

Indians, Eskimos, early Americans, or other peoples.

(3) This criterion would apply to marine areas containing fossils and geological formations whose study would reveal clues to the Earth's geologic history, the characteristics of ancient environments and the relationship of ancient plants and animals to the Earth's evolutionary history.

ADDITIONAL FACTORS IN SITE IDENTIFICATION AND SELECTION

III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

IV. Management Concerns

A. *Relationship to Other Programs*

While some sanctuaries may be designated to protect resources not currently managed by other existing programs (e.g., the *U.S.S. MONITOR* on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, the Program could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other pograms' efforts such as estuarine sanctuaries, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

B. *Management of a Conservation Unit*

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation unit amenable to effective management given fiscal and staff constraints of the managing entities.

C. *Accessibility*

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to factors which limit or enhance public access to a particular site.

D. *Surveillance and Enforcement*

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surviellance and the capabilities of responsible agents (e.g., U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types or resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, manpower, equipment, and budgetary requirements.

E. *Economic Considerations*

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by insuring long-term protection for commercially significant resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent, feasible, a decision to include a proposed site on the SEL will take into consideration the ecomonic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic efforts to sanctuary designation.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

Subpart A—General

Sec.
923.1 Purpose.
923.2 Definitions.
923.3 General requirements.

Subpart B—Uses Subject to Management

923.10 General.
923.11 Uses of subject to management.
923.12 Uses of regional benefit
923.13 Energy facility planning process.

Subpart C—Special Management Areas

923.20 General.
923.21 Areas of particular concern.
923.22 Areas for preservation or restoration.
923.23 Other areas of particular concern.
923.24 Shorefront access and protection planning.
923.25 Shoreline erosion/mitigation planning.

Subpart D—Boundaries

923.30 General.
923.31 Inland boundaries.
923.32 Seaward boundaries.
923.33 Excluded lands.
923.34 Interstate boundaries.

Subpart E—Authorities and Organization

923.40 General.
923.41 Identification of authorities.
923.42 State establishment of criteria and standards for local implementation—Technique A.
923.43 Direct State land and water use planning and regulation—Technique B.
923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.
923.45 Air and water pollution control requirements.
923.46 Organizational structure.
923.47 Designated State agency.
923.48 Documentation.

Subpart F—Coordination, Public Involvement and National Interest

923.50 General.
923.51 Federal-State consultation.
923.52 Consideration of the national interest in facilities.
Sec.
923.53 Federal consistency procedures.
923.54 Mediation.
923.55 Full participation by State and local governments, interested parties, and the general public.
923.56 Plan coordination.
923.57 Continuing consulation.
923.58 Public hearings.

Subpart G—Miscellaneous

923.60 General.
923.61 Segmentation.
923.62 Environmental assessment.

Subpart H—Review/Approval Procedures

923.70 General.
923.71 Recommended format for program submission.
923.72 Review/approval procedures.
923.73 Miscellaneous.
923.74 Preliminary approval.
923.75 Requirements for preliminary approval.
923.76 Preliminary review/approval procedures.

Subpart I—Amendments to and Termination of Approved Management Programs

923.80 General.
923.81 Requests for amendments.
923.82 Amendment review/approval procedures.
923.83 Mediation of amendments.
923.84 Routine program implementation.

Subpart J—Applications for Program Development or Implementation Grants

923.90 General.
923.91 State responsibility.
923.92 Allocation.
923.93 Geographic segments.
923.94 Eligible implementation costs.
923.95 Application for initial program development or implementation grants.
923.96 Applications for subsequent program development grants.
923.97 Applications for subsequent program implementation grants.
923.98 Applications for preliminary approval grants.
923.99 Approval of applications.
923.100 Grant amendments.

Subpart K—Improving Coastal Zone Management

923.101 General.
923.102 Significant improvement defined.
923.103 Selection and approval of activities leading to significant improvements.
923.104 Establishing the "increasing proportion."

Sec.
923.105 Failure to agree to pursue significant improvements.

AUTHORITY: Secs. 305, 306, 307 and 312, Coastal Zone Management Act of 1972, as amended, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013 (16 U.S.C. 1451 et seq.), unless otherwise noted.

SOURCE: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

Subpart A—General

§ 923.1 Purpose.

(a) The primary purpose of these regulations is to set forth the requirements for State coastal management program approval by the Assistant Administrator for Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act). Also, included in these regulations are the grant application procedures for program development and program implementation funds (pursuant to sections 305 and 306 of the Act, respectively); and conditions under which grants may be terminated.

(b) Sections 305, 306, and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; Coordination, Public Involvement and National Interest; and, Miscellaneous. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies.

(d) These regulations revise, consolidate, and supersede the following sets of existing regulations and guidance related to management program development and approval:

(1) Interim—Final Program Development and Approval regulations published March 1, 1978 (15 CFR Part 923) published in the FEDERAL REGISTER on March 1, 1978, dealing with all sections 305 and 306 program development and approval requirements;

(2) Final Coastal Zone Management Program Development regulations (15 CFR Part 920) published in the FEDERAL REGISTER on April 29, 1977, dealing with section 305 program development, preliminary approval and grant applications;

(3) Proposed Coastal Zone Management Program Approval regulations amendments (15 CFR Part 923) published in the FEDERAL REGISTER on December 30, 1976, dealing with subsections 306(c)(2)(B), 306(g), and 312 of the Act having to do with a continuing state-local consultation mechanism, changes to approved management programs, and termination and withdrawal of funding of approved management programs;

(4) Final Coastal Zone Management Program Approval regulations amendment (15 CFR Part 923) published in the FEDERAL REGISTER on November 2, 1976, dealing with subsection 306(h) of the Act having to do with island segments;

(5) The "Threshold Papers," informal guidance papers issued by Office of Coastal Zone Management (OCZM) in December 1975, but never published in the FEDERAL REGISTER;

(6) Interim Coastal Zone Management Federal-State Consultation regulations (15 CFR Part 925) published in the FEDERAL REGISTER on February 2, 1975, dealing with subsections 307 (b) and (h) of the Act which deal with federal consultation, review and approval procedures, and mediation during program development and preliminary approval; and

(7) Final Coastal Zone Management Program Approval regulations (15 CFR Part 923) published in the FEDERAL REGISTER on January 9, 1975, dealing with section 306 program approval requirements.

(e) Each subpart of the regulations is organized as follows:

(1) An introductory section describing which subsections of the Act are addressed in the subpart;

(2) Relevant statutory citations;

(3) The requirements. Where comments are included among the requirements, they are clearly distinguished by label and type face from the requirements. Comments on individual requirements are included for the purpose of providing a clearer understanding of acceptable or recommended ways to meet the requirement; and

(4) General commentary applicable to all the requirements.

(f) While states must meet the requirements of these regulations, their presentation—either to the Assistant Administrator or to the public—need not be in the order or terminology used herein. (See § 923.71 for further discussion of the program submission format.)

§ 923.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce and his/her designee. With the exception of the mediation functions discussed in § 923.54, all functions of the Act have been vested in the Assistant Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Department of Commerce Organizational Order 25-5A, and from the Administrator to the Assistant Administrator for Coastal Zone Management by NOAA Circular 78-14.

(c) The term "Assistant Administrator" means the Assistant Administrator for Costal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d)(1) The term "relevant Federal agencies" means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;
Department of Defense;
Department of Energy;
Department of Health, Education, and Welfare;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Federal Energy Regulatory Commission;
General Services Administration;
Nuclear Regulatory Commission.

(e) The term "Federal agencies principally affected" shall mean the same as "relevant Federal agencies." The Assistant Administrator may expand upon the term for purposes of reviewing the management program and environmental impact statement.

(f) The term "Coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone. The management program shall include an articulation of enforceable policies and citation of authorities providing this enforceability.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone,
(2) Coastal waters,
(3) Estuary,
(4) Land use.

(i) The term "grant" means a financial assistance instrumment and refers to both grants and cooperative agreements.

§ 923.3 General requirements.

(a) Statutory Citations, Subsection 306(c)(1):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the State had developed and adopted a management program for its coastal zone * * * which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

Section 302:
The Congress finds that—

> (a) There is a national interest in the effective management, beneficial use, protection, and develpment of the coastal zone.
>
> (b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and aesthetic resoures of immediate and potential value to the present and future well-being of the Nation;
>
> (c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;
>
> (d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;
>
> (e) Important ecological, cultural, historic, and aesthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;
>
> (f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;
>
> (g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and
>
> (h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.
>
> (i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet State and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

Section 303:

> The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coast-

> al zone for this and succeeding generations; (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with State and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(b) *Requirements.* The approvability of any state program will be determined by the Assistant Administrator in accordance with the following general requirements:

(1) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area;

(2) The management program must contain three broad classes of policies, consistent with the findings of section 302 of the Act, that are related to resource protection, management of coastal development, and simplification of governmental processes.

(i) Within these three broad classes, states must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas.

(ii) As part of these three broad classes of policies, the management program must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone. These particular policies shall minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Presidential Executive Order 11990, pertaining to wetlands. These policies also shall reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Presidential Executive Order 11988, pertaining to floodplains.

(3) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(4) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

§ 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsections 305(b)(2)—Uses Subject to Management, 305(b)(8)—Energy Facility Planning, and 306(e)(2)—Uses of Regional Benefit.

§ 923.11 Uses subject to management.

(a) Statutory Citation, Subsection 305(b)(2):

> The management program for each coastal state shall include * * * A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.

(b) *Requirements.* (1) States must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters.

(2) The management program must explain how those uses identified in paragraph (b)(1) of this section will be managed. The management program must contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(c) *General comments.* (1) In identifying uses and their appropriate management, States should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone.

(2) States also should consider potential individual and cumulative impacts of uses on coastal waters including, but not limited to the following uses:

(i) Residential and commercial developments such as subdivisions, highrise apartments or hotels, trailer parks and second-home developments, and shopping centers;

(ii) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations, liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development. (OCS oil and gas lease sale activities do not involve development activities and are not subject to the Federal consistency requirements of section 307(c)(1));

(iii) Recreational facilities such as beaches, amusement parks, marinas and other boating facilities;

(iv) Public facilities and public works such as schools, hospitals, government buildings, dams and water treatment facilities; and

(v) Transportation facilities such as highways, railroads, airports, ports and harbors.

(3) States should utilize the following types of analyses:

(i) Capability and suitability of resources to support existing or projected uses;

(ii) Environmental impacts on coastal resources;

(iii) Compatability of various uses with adjacent uses or resources;

(iv) Evaluation of inland and other location alternatives;

(v) Water dependency of various uses and other social and economic considerations.

(4) Since management of uses must take into account the full range of considerations called for in sections 302, 303 and 307(f) of the Act, examination of the following representative factors is suggested:

(i) Air and water quality;

(ii) Historic, cultural and aesthetic resources where coastal development resources is likely to affect these resources;

(iii) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(iv) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

[44 FR 18595, Mar. 28, 1979, as amended at 50 FR 35213, Aug. 30, 1985]

§ 923.12 Uses of regional benefit.

(a) Statutory Citation, Subsection 306(e)(2):

> Prior to granting approval, the Secretary shall also find that the program provides * * * for a method of assuring that local and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(b) *Requirement.* In order to meet the requirements of subsection 306(e)(2) of the Act, States must:

(1) Identify what constitute uses of regional benefit.

(2) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

§ 923.13 Energy facility planning process.

(a) Statutory Citation Subsection 305(b)(8):

> The management program for each coastal state shall include * * * (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process anticipating and managing the impacts from such facilities * * *

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating and managing the impacts from energy facilities in or affecting a State's coastal zone. This process must include the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(i) In determining energy facilities which may significantly affect the coastal zone, States must consider, at a minimum, those facilities listed in subsection 304(5) of the Act.

(ii) At a minimum, "significantly affect" shall be defined in terms of substantial or potentially substantial changes in coastal zone resources which could be affected by a proposed energy facility. These include changes in land, air, water, mineral, flora, fauna, noise, and objects of historic, cultural, archeological or aesthetic significance.

(2) Procedures for assessing the suitability of sites for such facilities. This assessment procedure shall be designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns.

(3) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts;

(i) States must identify any conditions that may be attached to State energy facility, planning and siting procedures;

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, anticipating and managing energy facilities or impacts, including licensing or permitting procedures.

(4) Identification of how interested and affected public and private parties will be involved in the planning process.

(i) States must identify the organization and structure and procedure means by which energy facility planning and siting decisions are carried out in the State.

(ii) States must address the respective roles of relevant State agencies and their relationship to the lead agency and to the management program's requirements as well as the respective roles and opportunity for participation by Federal agencies, local governments, other interested and affected public and private parties.

(iii) States must integrate into this planning process the procedures by which the national interest in the planning for and siting of energy facilities, identified pursuant to § 923.52(c) can continue to be considered after program approval.

(c) *General comments.* (1) States are encouraged to develop the elements required in paragraph (b) in consultation and cooperation with other State, local and Federal agencies. General consultation requirements for program development, of which this consultation should be considered a part, are discussed more fully in § 923.51. Depending on the approach taken to energy facilities management, this consultation and coordination should include, but need not be limited, to procedures for:

(i) Assessing need/demand projections;

(ii) Allocating these needs among coastal and inland locations;

(iii) Identifying potential coastal impacts; and

(iv) Determining site suitability of alternative locations for particular facilities.

(2) In developing this planning process, States should address several common problems having to do with weak policy and planning linkages and, relatedly, fragmented and overlapping jurisdictions.

(i) Often there is no comprehensive planning process. While one state agency may develop energy plans or policy regarding energy facilities, other state or local agencies may have the responsibility for issuing recessory siting and operating permits. Often these other agencies operate independently of and without regard to state energy or coastal management policies.

(ii) Relatedly, the responsibility for permitting of facilities is diffuse. Often several permits are required from several different agencies at different levels of government.

(iii) Additionally, there frequently are differing permitting processes for different types of energy facilities (e.g., oil and gas facilities as distinct from electric power plants). This may result in a lack of standardized procedures as well as inconsistent application of coastal management policies.

(3) In order to address these problems and to assure the full integration of coastal management considerations with the energy facility planning process, States should consider the following:

(i) Establishment of the designated State coastal management agency as the lead agency in revewing and making decisions related to siting and conditions of development for energy facilities located in or significantly affecting the coastal zone;

(ii) In states where siting authority is vested in an agency other than the coastal management agency, establishment of a formal means to assure the input and consideration of the coastal management agency's views as part of the decision-making process;

(iii) Establishment of a procedure whereby the management program policies are incorporated into locational or developmental decisions (e.g., licenses, permits, zoning approvals).

Subpart C—Special Management Areas

§ 923.20 General.

(a) This subpart deals with areas that are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 305(b)(3)—Geographic Areas of Particular Concern; 305(b)(5)—Guidelines on Priorities of Uses; 305(b)(7)—Shorefront Access and Protection Planning; 305(b)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) Statutory Citations Subsection 305(b)(3):

> The management program for each coastal state shall include * * *
>
> (a) an inventory and designation of areas of particular concern within the coastal zone.

Subsection 305(b)(5):

> The management program for each coastal state shall include * * *
>
> (b) broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) *Requirements.* (1) Inventory and designate geographic areas that are of particular concern, on a generic (i.e., by type of area, such as all wetlands or port areas) or site-specific basis, or both;

(i) In developing criteria for inventorying and designating areas of particular concern, States shall consider whether the following represent areas of concern requiring special management:

(A) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(B) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well being;

(C) Areas of substantial recreational value and/or opportunity;

(D) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(E) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(F) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, and salt water intrusion;

(H) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(ii) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(2) Identify areas by location (if site specific) or category of coastal resources (if generic) in sufficient detail that affected landowners, governmental entities and the public can determine with reasonable certainty if a given area is or is not designated.

(3) Describe the nature of the concern and the basis on which designations are made in order to: (i) Indicate why areas or types of areas have been selected for special management attention, and (ii) provide a basis for appropriate management policies and use guidelines.

(4) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(5) Provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

(a) Statutory Citation, Subsection 306(c)(9):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values.

(b) *Requirements.* (1) The criteria by which designations will be made must be included in the management program. Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational, ecological, or aesthetic values.

(2) The procedures by which designations will be made must be included in the management program.

§ 923.23 Other areas of particular concern.

(a) States must meet the requirements of § 923.21(b) in order to receive program approval. Beyond this, States have the option of designating specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. Where States exercise this option, they must meet the requirements of paragraph (b) of this section.

(b) *Requirements.* (1) The basis for designation of these additional special management areas must be clearly stated;

(2) A reasonable time frame and procedures must be established for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21(b);

(3) An agency (or agencies) capable of formulating the necessary management policies and techniques must be identified.

(c) States must meet the requirements of § 923.22(b) for having procedures for designating areas for preservation or restoration. Beyond this, States have the option of including procedures for designating areas of particular concern for other than preservation or restoration purposes after program approval. Where States exercise this option, they must meet the requirements of paragraph (d) of this section.

(d) *Requirements.* (1) The criteria by which designations of additional areas of particular concern will be made must be included in the management program; and

(2) The procedures by which such designations will be made must be included in the management program.

§ 923.24 Shorefront access and protection planning.

(a) Statutory Citation, Subsection 305(b)(7):

> The management program for each coastal shall include * * * (a) a definition of the term "beach" and a planning process for the protection to, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(3) There must be an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

(a) Statutory Citation, Section 305(b)(9):

> The management program for each coastal state shall include * * * A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the

State's planning process indicates is necessary.

Subpart D—Boundaries

§ 923.30 General.

(a) This subpart deals in full with subsection 305(b)(1) of the Act—Boundaries of the Coastal Zone.

(b) There are four elements to a State's boundary: The inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundaries are discussed in the sections of this subpart that follow.

(c) Statutory Citations, Subsection 305(b)(1):

> The management program for each coastal state shall include * * * (1) An identification of the boundaries of the coastal zone subject to the management program.

Subsection 304(1):

> The term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

Subsection 304(2):

> The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, estuary-type areas such as bays, shallows and marshes, and (B) in other areas, those waters adjacent to shorelines which contain a measurable quantity or percentage of seawater, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

§ 923.31 Inland boundaries.

(a) *Requirements.* The inland boundary of a State's coastal management area must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, pursuant to § 923.11 of these regulations;

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—Waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

(b) Beyond those areas required by paragraph (a) of this section above States have the option of including the following within the coastal zone boundaries:

(1) Watersheds—A State may determine some uses within entire watersheds have direct and significant impact on coastal waters. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters.

(3) Indian lands not held in trust by the Federal Government.

(c) *General comments.* Urban areas: In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Seaward boundaries.

(a) *Requirements.* (1) For States adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent States. For all other States participating in the program, the seaward boundary is the outer limit of the United States territorial sea.

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas.

Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) *General comments.* The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

§ 923.33 Excluded lands.

(a) *Requirement.* States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, States must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) *Indian lands.* Tribal participation in coastal management efforts may be supported and encouraged through a State's program provided that:

(1) Tribal lands are not held in trust by the Federal Government or otherwise excluded from the coastal zone; and

(2) Such efforts are compatible with a State's coastal management policies and are in furtherance of the national policies of section 303 of the Act.

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program. Therefore, States should consider mapping the following types of excluded Federal lands:

(i) Large-scale holdings (of 100 or more acres), especially those on which Federal activities may have spillover effects;

(ii) Lands near special management areas; and,

(iii) Lands that may be declared surplus or excess in the near future, especially those for which the State has reuse priorities or policies.

(2) In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundaries.

Requirement. States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of adjacent inland and lateral seaward boundaries.

Subpart E—Authorities and Organization

§ 923.40 General.

(a) The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified according to the previous subparts. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the State agency designated pursuant to section 306(c)(5) of the Act, other State agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(e)(1) of the Act. The requirements related to section 306(e)(2) are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a State's program, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(g) of the Act, which provides:

> In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(4)—Means of Control; 306(c)(7)—Authorities; 306(d)(1)—Control Development and Resolve Conflicts; 306(d)(2)—Powers of Acquisition; 306(e)(1)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organizational requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(6)—Organizational Structure; 306(c)(5)—Designated State Agency; and 306(c)(6)—Organization.

§ 923.41 Identification of authorities.

(a) Statutory Citations, Subsection 305(b)(4):

> The management program for each coastal state shall include * * * (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

Subsection 306(c)(7):

> Prior to granting approval of a management program submitted by a coastal state,

the Secretary shall find that * * * (7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Subsection 306(d):

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone, in accordance with the management program. Such authority shall include power:

(1) To administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) To acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) *Requirements.* In order to meet the requirements of the preceding subsections of the Act, States must:

(1) Identify relevant constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the State's management program.

(2) This identification will include the authorities pursuant to sections 306(d) and 306(e) of the Act which require a State have the ability to:

(i) Administer land and water use regulations in conformance with the policies of the management program;

(ii) Control such development as is necessary to ensure compliance with the management program; and

(iii) Resolve conflicts among competing uses;

(iv) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) Statutory Citation, Subsection 306(e)(1)(A):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For anyone or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance * * *

(b) Control technique subsection 306(e)(1)(A) of the Act allows for State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. There are 5 principal requirements associated with use of this control technique. They are that:

(1) The State have in place adequate standards and criteria to guide local program development;

(2) During the period while local programs are being developed, the State has sufficient authority to assure compliance with the management program's enforceable policies;

(3) The State can ensure that local coastal programs will be developed pursuant to its standards and criteria;

(4) The State review and approve local coastal programs to assure their conformance to State standards and criteria; and

(5) The State has the ability to assure local compliance with its program once approved.

More detailed and specific requirements for each of these general items are contained in paragraph (c) of this section.

(c) *Requirements.* (1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the managment program will comply with the program's enforceable policies. The adequacy of these authorities wil be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have (A) statutory authority to prepare and adopt a program for a local government, and (B) a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to (A) prepare and adopt a plan, regulations, and ordinances for the local government and (B) enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(A) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(*1*) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(*2*) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(*i*) Directly enforce the entire local program;

(*ii*) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(*iii*) Seek judicial relief against local government for failure to properly enforce;

(*iv*) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(*v*) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) Statutory Citation, Subsection 306(e)(1)(B):

> Prior to granting approval, the Secretary shall also find that the program provides:
>
> (1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone: * * * Direct state land and water use planning regulation.

(b) Control technique subsection 306(e)(1)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct State authority. This authority can take the form of:

(1) Comprehensive legislation: A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking: The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3

(c) *Requirements*. In order to apply the networking concept, State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorites provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies.

(3) A gubernatorial executive order will be an acceptable instrument to meet the requirements of paragraph (c)(2) of this section in those States where networked State agency heads are directly responsible to the Governor.

(4) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) Statutory Citation; Subsection 306(e)(1)(C):

> Prior to granting approval, the Secretary shall find that the program provides:
>
> (1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:
>
> State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) *Requirements.* To use this control technique States must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identifed plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§ 923.45 Air and water pollution control requirements.

(a) Statutory Citation, Subsection 307(f);

> Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Act as amended, or the Clean Air Act as amended, or (2) established by the Federal Government or any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General Comments.* (1) Incorporation of the air and water quality requirements pursuant to the Clean Water Act, as amended (CWA) and Clean Air Act (CAA), as amended, should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

(2) Following is a table of the most important Clean Air Act requirements. These requirements are categorized as either uniform, nationwide requirements or non-uniform requirements applicable to a specific State or local area. The first cateogry of requirements is established in the Clean Air Act or by the Environmental Protection Agency (EPA) pursuant to provisions of the CAA, and applies uniformly in all areas of the country. The second category of requirements is based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of a State. The majority of the second category of requirements will be included

in the State Implementation Plans (SIPs) required by the Clean Air Act.

TABLE—CLEAN AIR ACT REQUIREMENTS

Uniform, nationwide requirements.	Nonuniform, nationwide requirements (SIPs).
National ambient air quality standards.	New source review.
Motor vehicle emission standards (except where States have been granted a waiver by EPA).	Emissions or air quality standards more stringent than Federal standards.
New source performance standards.	Prevention of significant deterioration.
National emissions standards for hazardous air pollutants.	Attainment and maintenance of national ambient air quality standards. Other attainment or maintenance measures such as transportation control measures.

(3) Water quality standards are established by EPA promulgation or approval of State standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation, EPA itself develops standards on effluent limitations, new source preformance standards, pre-treatment standards and toxic pollutant discharge standards.

(c) *Requirements.* (1) States must incorporate into their program, by reference or otherwise, requirements established pursuant to the Clean Water Act (CWA), as amended, and the Clean Air Act (CAA) as amended.

(2) If more stringent standards are developed; by a State or locality pursuant to the CWA or CAA, and where such standards can be enforced under State authorities, they must be incorporated, by reference or otherwise, into the State's management program.

§ 923.46 Organizational structure.

(a) Statutory Citation, Subsection 305(b)(6):

> The management program for each coastal state shall include * * * A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

Subsection 306(c)(6):

> Prior to grant approval of management program submitted by a coastal state, the Secretary shall find that * * * the State is organized to implement the management program required under paragraph (1) of this subsection.

(b) The main purpose of this requirement is to provide a clear understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities.

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c) (B); 306(c)(7); 306(d) (1) and (2); 306(e) (1) and (2) and 307(f)

(2) States must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act.

§ 923.47 Designated State agency.

(a) Statutory Citation, Subsection 306(c)(5):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this section.

(b) *Requirements.* (1) The Governor must designate a single State entity to receive and administer section 306 grants.

(2) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(3) This entity must have the administrative capability to monitor and evaluate the management of the

State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to OCZM, the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review of State performance required by section 312 of the Act.

(c) *General comments.* (1) The 306 agency designated is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is however, the focal point for proper administration and evaluation of the State's program and the entity to which OCZM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirements for the single designated agency contained herein need not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in arriving at a designation:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

(a) *Requirements.* Documentation in the form of a transmittal letter signed by the Governor, accompanying the management program submittal, is required to the effect that the Governor:

(1) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(2) Has designated a single State agency to receive and administer implementation grants;

(3) Attests to the fact that the State has the authorities necessary to implement the management program; and

(4) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

§ 923.50 General.

(a) Statutory Citation, Section 303:

> The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate

with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint, action particularly regarding environmental problems.

(b) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of varying, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and esthetic values and needs for economic development; and

(3) The involvement of the public, of Federal, State and local governments and of regional agencies in the development and implementation of coastal management programs.

(c) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(d) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(c)(1)—Opportunity for Full Participation; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State—Local Consultation; 306(c)(3)—Public Hearings; 306(c)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) Statutory Citations, Subsection 306(c)(1):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: The state has developed and adopted a management program for its coastal zone * * * with the opportunity for full participation by relevant Federal agencies.

Subsection 307(b):

> The Secretary shall not approve the management program submitted by a State prusuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(c)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships. In exchange for providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15

CFR Part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See Subpart H for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) *Requirements.* In order to address that portion of subsection 306(c)(1) of the Act that deals with Federal agency participation, each State must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(c)(2)(A) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) Statutory Citation, Subsection 306(c)(8):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such considerations to any applicable interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during (1) the development of the State's management program, (2) the review and approval of the program by the Assistant Administrator, and (3) the implementation of the program as such facilities are proposed.

(c) *Requirements.* States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any interstate energy plans or programs, developed pursuant to section 309 of the Act, which are applicable to or affect a State's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§ 923.53 Federal consistency procedures.

(a) *Requirements.* States shall include in their management program submission, as part of the body of the submission an appendix or an attachment, the procedures they will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following shall be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(c)(5) of the Act or a single other state agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including the following in their management programs:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

(a) Statutory Citation, Subsection 307(h):

> In the case of serious disagreement between any Federal agency and a coastal State:
>
> (1) in the development or the initial implementation of a management program under section 305; or
>
> (2) in the administration of a management program approved under section 306; the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(b) The Act provides for the mediation of "serious disagreements" between any Federal agency and a coastal State during the development and implementation of a management program. In certain cases, mediation by the Secretary or his/her designee, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution. This section describes the conditions of and processes for mediation of serious disagreements that may arise during program development or implementation.

(c) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefor. A copy of the request shall be sent to the other party to the disagreement.

(d) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the State agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development or preliminary approval grants) or for program implementation (if a State is receiving section 306 program implementation grants) may notify the secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the ageny with which the requesting agency disagrees and to the Assistant Administrator.

(e) Within 15 days following receipt of a request for mediation, the disagreeing agency shall transmit a written response to the Secretary, the agency requesting mediation and to the Assistant Administrator indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, the basis for refusal must be indicated. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to resolve the basis for refusal and persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. The Secretary will not provide mediation assistance unless all parties to the serious disagreement agree to participate.

(f) In the case of a serious disagreement that occurs during program development, if all parties agree to mediation, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, and the disagreeing Federal and State agencies. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference. Notice also shall be placed in the FEDERAL REGISTER to allow other parties an opportunity to make known to the Secretary in writing their interest in the disagreement.

(g) If the mediation efforts do not resolve the disagreement, the Assistant Administrator shall determine whether inclusion in the management program of the State agency's position in the disgreement affects the Assistant Administrator's ability to approve the State's management program. The Assistant Administrator shall communicate his/her determination in writing, with the reason(s) therefor, the parties to the disagreement.

(h) In the case of a serious disagreement that occurs during program implementation, if the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing. Notice of the hearing also shall be placed in the FEDERAL REGISTER. At the time public notice is provided, the Federal and State agencies shall provide the public convenient access to public data and information related to the serious disagreement. Hearing shall be informal and shall be conducted by the hearing officer with the objective of securing, in a timely fashion, information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly long or repetitious oral presentations may be excluded at the discretion of the hearing officer. In the event of such exclusion, the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies. Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(i) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(j) Mediation shall terminate: (1) At any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

(k) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

§ 923.55 Full participation by State and local governments, interested parties and the general public.

(a) Statutory Citation, Subsection 306(c)(1):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: the state has developed and adopted a management program for its coastal zone * * * with the opportunity of full participation by * * * state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private * * *

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(c)(1) of the Act requires that the opportunity for full participation in program development be provided State agencies, local governments, regional commissions and organizations, port authorities, and other interested public or private parties. To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties States must:

(1) Develops and make available general information regarding the program design, its content and its status throughout program development;

(2) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(3) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

(4) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) Statutory Citation, Subsection 306(c)(2)(A):

> Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *
>
> The State has: coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency * * *

(b) *Requirements.* States must insure that the contents of their management programs have been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) Statutory Citation, Subsection 306(c)(B):

> Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *
>
> The state has * * * established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:
>
> (i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.
>
> (ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision unless such local government waives its rights to comment.
>
> (iii) Such management agency, if any such comments are submitted to it, within such 30-day period, by any local government:
>
> (I) is required to consider any such comments,
>
> (II) is authorized, in its discretion, to hold a public hearing on such comments, and
>
> (III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multistate and other State agencies with activities in the coastal zone and the State agency designated pursuant to subsection 306(c)(5) of the Act;

(2) Establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(i) "Management agency" refers to the State agency designated by the Governor pursuant to subsection 306(c)(5) of the Act and to any other State agency responsible for implementing a management program decision;

(ii) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms;

(iii) A State management program decision shall be considered to be in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(iv) "Local government" refers to those defined in section 304(10) of the Act which have some form of zoning authority.

(v) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(vi) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(vii) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(A) Following State agency receipt of a written statement from a local government indicating that it either:

(*1*) Waives its right to comment; or

(*2*) Concurs with the management program decision; or

(*3*) Intends to take action which conflicts or interferes with the management program decision; or

(B) Following a public statement by a local government to the same effect as paragraph (b)(2)(vii)(A) of this section; or

(C) Following an action by a local government that conflicts or interferes with the management program decison.

(viii) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

(a) Statutory Citations, Subsection 306(c)(1):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:
>
> The state has developed and adopted a management program for its coastal zone * * * after notice * * *

Subsection 306(c)(3):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * *
>
> The state has held public hearings in the development of the management program.

Section 311:

> All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials perti-

nent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(b) *Requirements.* States shall:

(1) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(2) Provide a minimum of 30 days public notice of hearing dates and locations;

(3) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings;

(4) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Miscellaneous

§ 923.60 General.

The purposes of this subpart are to provide guidance on meeting the requirements of subsection 306(h) of the Act dealing with segmented management programs and fulfilling the requirements for an environmental impact assessment which all management program submissions, whether for a State's total coastal zone or for a segment, must contain.

§ 923.61 Segmentation.

(a) Statutory Citation, Section 306(h):

> At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, that the state adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(b) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs already developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion.

(c) A segmented management program shall not be developed solely for the purpose of protecting or controlling a single coastal resource or use.

(d) Segmentation is at the State's option, but requires the approval of the Assistant Administrator.

(e) *Requirements.* If a State intends to adopt its management program in two or more segments, it shall advise the Assistant Administrator as early as practicable, stating the reasons for segmenting the program, and requesting the Assistant Administrator's approval. Upon receipt of the Assistant Administrator's approval, the segment submission shall include:

(1) A geographic area on both sides of the coastal land/water interface;

(2) A timetable and budget for the timely completion of the remaining segment(s); and

(3) The management boundary for the entire coastal zone throughout the state as part of the segment submission.

(4) Documentation of how the requirements of Subparts A through F are met for the segment.

§ 923.62 Environmental assessment.

(a) *Requirements.* All State management program submissions must contain an environmental assessment at the time of submission of the management program to OCZM for threshold review. In accordance with the Council on Environmental Quality regulations (FEDERAL REGISTER Vol. 43, No. 230, Nov. 29, 1978) § 1506.5(a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

(2) A brief discussion of the need for the State's participation in the Federal program;

(3) A succinct description of the environment to be affected by program implementation;

(4) A description and discussion of the major alternatives which were considered by the State in developing the coastal management program;

(5) A discussion of the environmental impacts of implementing the program;

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

(b) *General comments.* OCZM will independently evaluate the State's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedures for the EIS are discussed in § 923.72.

Subpart H—Review/Approval Procedures

§ 923.70 General.

The purpose of this subpart is to describe the process of State program review and approval following submission of a State's management program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; States should at least anticipate that it normally will take 7 months between the time a State first submits a draft management program to OCZM for threshhold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval. In addition, this subpart provides criteria for providing preliminary approval of State coastal management programs pursuant to subsection 305(d) of the Act.

§ 923.71 Recommended format for program submission.

(a) This guidance is provided in response to requests from a number of States for a suggested format. States should note, however, that this format is not mandatory. As long as States address all the sections of the Act and associated requirements of these regulations, the presentation may be in such format as best suits their needs provided that such format has been discussed with and agreed to by OCZM.

(b) States should include an index with their program submission that indicates where in the management program document the information can be found which is necessary to make the findings required by the Act and associated requirements of these regulations. A chart is provided below of the findings required by the Act and associated requirements of these regulations. This chart should assist States in developing the index. If States use the chart below as an index, it is recommended that a third column entitled Page Number be added to expedite review.

TABLE 2—CHART—FINDINGS NECESSARY FOR SECTION 306 APPROVAL

Section of the Act	Associated section(s) of these regulations
Sec. 306(a) which includes the requirements of sec. 305:	
305(b)(1): Boundaries	923.31–923.34.
305(b)(2): Uses subject to management	923.11.
305(b)(3): Areas of particular concern	923.21–923.23.
305(b)(4): Means of control	923.41.
305(b)(5): Guidelines on priorities of uses	923.21.
305(b)(6): Organizational structure	923.46.
305(b)(7): Shorefront planning process	923.24.
305(b)(8): Energy facility planning process	923.13.
305(b)(9): Erosion planning process	923.25.
Sec. 306(c) which includes:	
306(c)(1): Notice: full participation; consistent with sec. 303	923.3, 923.51, 923.55, and 923.58.
306(c)(2)(A): Plan coordination	923.56.
306(c)(2)(B): Continuing consultation mechanisms	923.57.
306(c)(3): Public hearings	923.58.
306(c)(4): Gubernatorial review and approval	923.48.
306(c)(5): Designation of recipient agency	923.47.
306(c)(6): Organization	923.46.
306(c)(7): Authorities	923.41.
306(c)(8): Adequate consideration of national interest	923.52.
306(c)(9): Areas for preservation/restoration	923.22.
Sec. 306(d) which includes:	
306(d)(1): Administer regulations, control development; resolve conflicts	923.41.
306(d)(2): Powers of acquisition, if necessary	923.41.
Sec. 306(e) which includes:	
306(e)(1): Technique of control	923.42–923.44.
306(e)(2): Uses of regional benefit	923.12.
Sec. 306(h): Segments	923.61.
Sec. 307 which includes:	
307(b): Adequate consideration of Federal agency views	923.51.
307(f): Incorporation of air and water quality requirements	923.45.
Applicable only to segmented management programs	

(c) OCZM recommends the following format for program submission: Summary; Framework of Program Development; Policies; 306 Requirements. OCZM also recommends the following items as appendices: Documentation of Government Consultation and Public Participation Efforts; Summaries of Required Public Hearings; Text of Relevant Legal Authorities; Environmental Assessment; and such other technical reports, maps, organizational charts or other materials a State feels would be useful in reviewing the management program. The elements of the main body of the management program are discussed in greater detail below:

(1) *Summary.* This section should serve as an executive summary of the program and should describe briefly the major elements of the State's management program. This section also should include a discussion of objectives the State will seek to attain through implementation of its management program. Specific milestones and timeframes for accomplishment of these objectives should be established where possible.

(2) *Framework of program development.* This section should address the major coastal issues and problems identified during the program development process, the nature of those issues and problems, and how the management program can help to resolve them. This section should include a discussion of the major coastal natural resources and human activities which are important, unique and/or subject to intense pressures or conflicts. A brief discussion of the institutional setting within which the program was developed and some of the major considerations or alternatives that led to particular management approaches is appropriate as part of this section. In addition, there should be a brief discussion of those issues and problems which the program may not address initially but which will be taken into consideration during program implementation and/or future program refinements.

(3) *Policies.* This section should contain those policies that provide for a comprehensive, enforceable and predictable management program. These policies should be tied to issues and problems (discussed in paragraph (c)(2) of this section) and to legal authorities (discussed in paragraph (c)(4) of this section).

(4) *306 requirements.* In this section States should demonstrate that the requirements of the Act and these regulations have been met. The following contents are suggested:

(i) *Boundaries.* The requirements of subsection 305(b)(1) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered. General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) *Uses subject to management.* The requirements of subsections 305(b)(2), 305(b)(8) and 306(e)(2) of the Act and related §§ 923.11 through 923.13 of these regulations should be addressed.

(iii) *Special management areas.* The requirements of subsections 305(b)(3), 305(b)(5), 305(b)(7), 305(b)(9), and 306(c)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps locating designated Areas of Particular Concern.

(iv) *Authorities and organization.* The requirements of subsections 305(b)(4), 305(b)(6), 306(c)(5), 306(c)(7), 306(d), 306(e)(1) and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: State legislation, State agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organizational structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the State agency designated pursuant to subsection 306(c)(5) of the Act and of other State, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated State agency to these other agencies also should be described.

(v) *Consultation, participation and national interests.* The requirements of subsections 306(c)(1) through (c)(3), 306(c)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and State agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest considerations; what procedures the State will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) *Miscellaneous.* Normally, States will address the requirements of subsection 306(c)(4) and related § 923.48 in the gubernatorial transmittal that will accompany the program submission.

(d) For a segment submission, the same format should be used. All the requirements of the Act and these regulations apply, unless otherwise noted in § 923.61. Segment submissions also must address the requirements of subsection 306(h) of the Act and the associated requirements of § 923.61.

§ 923.72 Review/approval procedures.

(a) Upon submission by a State of its draft management program, OCZM is to determine if it adequately meets the requirements of the Act and these regulations. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCZM will prepare a Draft Environmental Impact Statement (DEIS). The DEIS will incorporate the State's program document. This combined document, hereinafter referred to as the DEIS, will be distributed to principally affected Federal agencies, State, local and regional agencies, national interest groups and to interested individuals. Preparation of the DEIS, printing of the document, delivery to EPA, and publication in the FEDERAL REGISTER of notice of availability of the DEIS and notice of date and location of public hearing on the DEIS usually will take 45 days. Since States normally will be responsible for printing the DEIS, the time involved will vary depending on State printing capabilities.

(b) From the time of notice of availability in the FEDERAL REGISTER of the DEIS, each Federal agency, other person or entity normally has 45 days, pursuant to CEQ regulations to provide comments, if any, on the DEIS to the Assistant Administrator. During this time period, a public hearing will be held in one or more locations in the coastal State whose program is under review. At least fifteen (15) days notice, pursuant to CEQ regulations and the Administrative Procedures Act, will be provided, including announcement of availability of the DEIS. Following the public hearing(s), the comment period normally will remain open for fifteen days.

(c) Following the close of the DEIS comment period, the Assistant Administrator will review and evaluate comments received, in keeping with the requirement of subsection 307(b) of the Act to adequately consider the views of principally affected Federal agencies, and in keeping with the requirements of the National Environmental Policy Act (NEPA). Preparation of response to comments, revisions to the State's management program (if appropriate), submission of a final program, and preparation and printing of a Final Environmental Impact Statement (FEIS) normally will take a minimum of three months. Factors that will vary this time frame are: The nature of comments received on the DEIS, the nature and extent of revisions necessary to the management program, and State capabilities with respect to printing the FEIS (since States normally also will be responsible for printing the FEIS).

(d) Notice of the availability of the FEIS will be published in the FEDERAL REGISTER. The Assistant Administrator shall send a copy of such statement to each Federal agency or other person or entity which received a copy of the DEIS and to any additional persons who request a copy of the FEIS.

(e) The Assistant Administrator will review and evaluate any comments received during the thirty day review in keeping with the requirements of subsection 307(b) of the Act. The Assistant Administrator shall then approve or disapprove a State's management program. In the event of approval, the Assistant Administrator shall prepare a set of findings with respect to the requirements of the Act. These findings shall be available upon request. Notice of availability of these findings shall be published in the FEDERAL REGISTER. Principally affected Federal agencies will be sent a copy of the findings as a matter of course.

(f) In the event review of comments on the FEIS leads to a decision by the Assistant Administrator not to approve the management program, the Assistant Administrator shall so advise the State in writing, including the reason therefor. Notice of this decision also will be published in the FEDERAL REGISTER.

§ 923.73 Miscellaneous.

The timelines laid out in § 923.72 may be shortened if any of the following occur:

(a) Reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness; or

(b) A draft environmental impact statement has been issued in connection with preliminary approval pursuant to subsection 305(d) of the Act (see § 923.74 et seq.) and a supplementary or final impact statement is all that is necessary for full approval pursuant to subsection 306(a) of the Act; or

(c) In the case of segmented programs only, a determination is made that the proposed segment management program will not significantly affect the environment. In such cases a negative declaration will be prepared. The program submission still shall be sent to principally affected Federal agencies for their review and comment.

§ 923.74 Preliminary approval.

(a) Statutory Citation, Subsection 305(d):

> The Secretary may make a grant annually to any coastal state * * * if a coastal state has a developed management program which (A) is in compliance with the rules and regulations promulgated to carry out subsection (b), but has not been approved by the Secretary under section 306; (B) specifically identified * * * any deficiency in such program which makes it ineligible for approval * * * and has established a reasonable time schedule during which it can remedy any such deficiency; (C) specified the purposes for which the grant will be used: (D) taken or is taking adequate steps to meet any requirement under sections 306 or 307 which involves any Federal official or agency; and (E) complied with any other requirement * * * necessary and appropriate to carry out the purposes of this subsection.

(b) The basic purpose of preliminary approval is to allow a State additional time to implement fully a coastal management program which, in its design and description, meets the requirements of section 306 of the Act. In granting preliminary approval, recognition is given to the need to describe, in a subsection 305(d) work program, those deficiencies precluding section 306 approval, the specifics for remedying those deficiencies, and a timetable within which this is to occur.

(c) Another objective is to provide funding to support initial implementation of selected elements of a State's coastal management program, provided that the overall design and description of the program meets the section 306 requirements. For selected elements to be initially implemented, necessary section 306 legal authorities and administrative capabilities must be in place;

(d) A third objective is to provide a State with additional time to resolve problems, uncovered during DEIS review of a program submitted for section 306 approval, when such problems would preclude full approval.

(e) The following are examples of situations under which States may apply for preliminary approval:

(1) A State may be able to describe the legislative authority it needs in order to meet the requirements under section 306 to have an approvable program, and to draft a bill carrying this out, but not be able to enact same within the time period provided pursuant to subsection 305(c). This could be because the legislature meets only every two years, or because the process is too complicated to accomplish in a matter of months.

(2) A State program may call on local units of government to prepare their own coastal plans in accordance with State guidelines. However, one or more years may be required for these units to carry out their work. Under this example, it should be noted that, depending on the nature of the State-local relationships and existing legal authorities, this activity also can be accomplished as part of a State's subsection 305(c) program development grant or as part of a section 306 program administrative grant.

(3) A State may need to reorganize within the Executive branch before a program can gain approval and funding under section 306.

(4) A State may be encountering problems resolving differences with one or a number of Federal agencies with respect to specific aspects of its coastal management program.

(f) Preliminary approval is not seen as a necessary continuum from section 305 to section 306 status. States may move directly from subsection 305(c) (program development) grants to section 306 (program implementation) grants. Progression from subsection 305(c) status to subsection 305(d) (preliminary approval) status is not automatic, nor is progression from preliminary approval status to section 306 status automatic. Application for preliminary approval requires consultation with the Assistant Administrator to insure that the State meets the eligibility conditions and approval criteria.

(g) Preliminary approval is meant to apply to a fully described coastal management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to this subsection but shall continue to be considered under provisions of section 306 of the Act and related § 923.61 of these regulations.

(h) In order to be eligible for consideration for preliminary approval, a State must be in one of the following situations:

(1) All subsection 305(c) program development grants must have been expended and the State can describe a program that meets the basic approval criteria but there are still aspects of the program which must be instituted before section 306 approval can be given; or

(2) At any time during section 305 program development when a State has elements of its coastal management program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented); or

(3) During the course of section 306 review, problems are uncovered that preclude section 306 approval but do not preclude preliminary approval.

§ 923.75 Requirements for preliminary approval.

(a) *Requirements.* For a State's coastal management program to receive preliminary approval pursuant to subsection 305(d) of the Act, the State must submit a document which:

(1) Describes the overall management program in sufficient detail that the Assistant Administrator can determine the program meets all section 305(b) requirements at the time submitted for preliminary approval and that it will meet all section 306 requirements at the time submitted for final approval;

(2) Identifies deficiencies that prohibit achievement of section 306 program approval, the means and a timetable for remedying these deficiencies.

(3) Specifies the purposes for which the subsection 305(d) grant is to be used.

(4) Demonstrate that adequate steps have been or are being taken to meet the requirements under section 306 or 307 of the Act, which involve Federal agencies. For purposes of this paragraph, the particular sections of 306 and 307 are:

(i) Subsection 306(a)(1)—identification of excluded Federal lands;

(ii) Subsection 306(c)(1)—opportunity for full participation by relevant Federal agencies. This shall include advising Federal agencies (especially at the regional level) of the State's intent to apply for preliminary approval;

(iii) Subsection 306(c)(8)—adequate consideration of the national interest involved in planning for, and in the siting of, facilities necessary to meet requirements which are other than local in nature;

(iv) Subsections 307 (c) and (d)—development of procedures for implementing the Federal consistency requirements upon full approval of the State's program; and

(v) Subsection 307(h)(1)—participation in mediation procedures, if appropriate.

(5) Demonstrates that the necessary legal authorities and organizational capability for implementation exists at the time of preliminary approval for those elements to be implemented under subsection 305(d).

(6) Includes an Environmental Assessment.

§ 923.76 Preliminary review/approval procedures.

(a) States interested in preliminary approval should consult with the Assistant Administrator well in advance of the point at which they would like to receive such approval. As a general rule, such consultation should begin six months before approval is desired. The purpose of this consultation is to determine:

(1) If the program will be sufficiently developed, designed and described to warrant consideration for preliminary approval at the time desired;

(2) If there are any elements of the State's management program eligible for implementation funding as part of preliminary approval;

(3) The content and detail of the Environmental Assessment (EA) which must accompany the State's preliminary approval submission; and

(4) If an EIS will be necessary prior to granting preliminary approval. If the Assistant Administrator indicates that the program appears to meet the subsection 305(d) approval criteria, and if a determination is that an EIS will not be necessary prior to preliminary approval, States should plan on submitting the subsection 305(d) program document, including an EA, two to three months prior to the desired date of approval. If the Assistant Administrator determines an EIS will be necessary prior to granting preliminary approval, States should plan on submitting the program document, including the EA shortly after this determination is made. The EIS procedures discussed in § 923.72 then will be followed. The subsection 305(d) program document should follow the general format recommended by OCZM in § 923.71. In addition, the information required in § 923.75(a) (2) and (3) with respect to describing deficiencies, timetable for remedying, and purposes for which the grant will be used must be included. The application for grant funds and the accompanying work program is separate document that may be submitted in conjunction with or subsequent to submission of the subsection 305(d) program document. The requirements for the grant application are contained in § 923.98.

(b) Upon submission by a State of a subsection 305(d) program document, the Assistant Administrator shall review the document for compliance with the approval criteria contained in § 923.75. If a State meets the approval criteria, the Assistant Administrator may award a subsection 305(d) grant and will issue a set of findings with respect to deficiencies and the timetable for their resolution.

(c) Copies of the subsection 305(d) program document and the Assistant Administrator's finding of deficiencies will be distributed to relevant Federal agencies.

(d) If a State applies for preliminary approval after formal section 306 program review has begun, preliminary approval will be issued at that point in the section 306 review process when the DEIS review reveals problems that preclude full program approval and implementation but do not preclude preliminary approval. States will be required to take into consideration those items raised by DEIS reviews as part of the subsection 305(d) work program.

Subpart I—Amendments to and Termination of Approved Management Programs

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Statutory Citations, Subsection 306(g):

> Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c) * * * [N]o grant shall be made under this section to any coastal state after the date of such amendment of modification, until the Secretary approves such amendment or modification.

Subsection 312(b):

> The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating or managing areas or particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

§ 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) *Requirements.* Amendment requests shall contain the following:

(1) Description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator;

(2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: Changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendments:

(i) At least one public hearing must be held on the proposed amendment, pursuant to section 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments:

(i) Where OCZM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in paragraph (b)(1) of this section), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed;

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

(c) Requests for amendments should be sumitted to the Assistant Administrator whenever possible prior to final State action to implement a major program.

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment request, still will constitute an approvable program.

(i) For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(B) Transitional and intertidal areas;

(C) Salt marshes and wetlands;

(D) Islands;

(E) Beaches; and

(F) Waters under tidal influence.

(ii) For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(A) Identify which uses are subject to the management program (see § 923.10(b)(1));

(B) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of sections 302 and 303 of the Act (see § 923.3(b)(1) and (2));

(C) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval (see § 923.10 (b)(2)); and

(D) Identify uses considered by the State to be of regional benefit and a method (or methods) of assuring local regulations do not unreasonably restrict or exclude such uses (see § 923.12(b)).

(iii) Amendments affecting criteria for designating or managing areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(A) Criteria for designations (see § 923.21(b)(1));

(B) Designation of areas on a generic or site-specific basis (see § 923.21(b)(1) and (2));

(C) Description of how the management program addresses and resolves the management concerns for which areas are designated (see § 923.21(b)(3) and (4)); and

(D) Guidelines regarding priority of uses, including uses of lowest priority (see § 923.21(b)(5)).

(iv) For amendments affecting criteria for designating or managing areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values (see § 923.22(b)).

(v) For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(A) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedures (see § 923.52(c)(1));

(B) The sources relied upon for such consideration (see § 923.52(c)(2));

(C) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered (see § 923.52(c)(4)); and

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (section 306(c)(1) and (c)(3); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(c) of the Act have not been met, the Assistant Administrator shall advise the State in writing of the reasons why the amendment request cannot be considered.

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with repect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the managment program unapprovable, that State may be subject to withdrawal of program approval and withdrawal of administrative funding. (See 15 CFR 928.5(b).)

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(c) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(i) Following review of comments on the FEIS, the Assistant Administrator will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the FEDERAL REGISTER. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the FEDERAL REGISTER of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period and after taking into account all comments received, the Assistant Administrator will make a final decision on whether to approve the proposed amendment and issue notice thereof in the FEDERAL REGISTER.

[44 FR 18595, Mar. 28, 1979, as amended at 47 FR 21024, May 17, 1982]

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized for serious disagreements during program implementation. (See § 923.54).

§ 923.84 Routine program implementation.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(c), will be considered routine program implementation. Routine implementation is not subject to the amendment procedures contained in §§ 923.81 through 923.82. It is subject to mediation provisions of § 923.83.

(b) *Requirements.* (1) States shall notify OCZM of routine program implementation actions in order that OCZM may review the action to ensure it does not constititute an amendment.

(i) States have the option of notifying OCZM of routine implementation on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCZM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (b)(4) of this section has been provided.

(2) Concurrent with notifying OCZM, States shall provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCZM.

(i) This notice shall:

(A) Describe the nature of the routine program implementation;

(B) Indicate that the State considers it routine program implementation and has requested OCZM's concurrence in that determination; and

(C) Indicate that any comments on whether or not the action does or does no constitute routine program implementation may be submitted to OCZM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCZM shall inform the State whether it concurs that the action constitutes routine program implementation. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCZM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice shall:

(A) Indicate the date on which the State received concurrence from OCZM that the action constitutes routine program implementation;

(B) Reference the earlier notice (required in paragraph (b)(2) of this section) for a description of the content of the implementation action; and

(C) Indicate if Federal consistency applies as of the date of the notice called for is this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCZM does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81 through 923.82.

Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Adminstrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Office of Management and Budget Circular A-102, Administrative Requirements for Grants-in-Aid to State and local governments, and other directives from the NOAA and OCZM grants offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the administrative discretion of the Assistant Administrator.

(d) Grants shall not exceed eighty per cent of the annual total cost of the program.

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsection 306(a) or (h) of the Act.

(f) All application and preapplication forms are to be requested from and submitted to:

> National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Grants and Loans Operations Staff, 3300 Whitehaven Street, N.W., Washington, DC 20235.

§ 923.91 State responsibility.

(a) Applications for program grants shall be submitted by the Governor of a participating State or by the head of the State entity designated by the Governor pursuant to subsection 306(c)(5) of the Act.

(b) In the case of section 305 grant, the application shall designate a single State agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(c)(5) of the Act as the single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated State entity is fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Statutory Citations, Subsections 305(g):

> With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

Subsection 306(f):

> With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, that such allocation shall not relieve the state of the responsibility of ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, of Indian tribes. If the work to result from such allocation(s) contributes to the effective development or implementation of the State's management program:

(1) *Local governments.* Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government.

(2) *Local governments.* Where a State will be relying on direct State controls as provided for in subsection 306(e)(1)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for specified local activities or one-time projects, again subject to adequate State overview, then a proportional amount of administrative grant funds can be allocated to local governments.

(3) *Areawide agencies.* Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absent of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development

agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperative Act of 1968.

(4) *Indian Tribes.* In furtherance of the policy enunciated in § 923.33(b)(2), individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 923.93 Geographic segments.

(a) Application procedures for a grant to be awarded pursuant to subsection 306(h) of the Act for a geographic segment of a State's coastal zone are the same as those set forth in this subpart for a grant to administer the approved management program of the entire coastal zone of a State.

(b) When a State has a program for a geographic segment of its coastal zone approved pursuant to subsection 306(h) of the Act, that portion of a State's coastal zone not awarded segment approval will continue to be eligible for section 305 grants until authorization for such funds terminates.

§ 923.94 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes except as described in paragraph (d) of this section.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to carry out and enforce program policies, authorities and other management techniques. Implementation activities should be related to achieving substantive results in the following 4 major areas, which are derived from the policies and findings of sections 302 and 303 of the Act:

(1) Protection of significant natural coastal resources, and areas including, as appropriate, wetlands, beaches, dunes, barrier islands, reefs and fisheries.

(2) Management of coastal development to:

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence or saltwater intrusion;

(ii) Provide priorities for water-dependent uses such as ports, fishing facilities and water-dependent energy facilities; and

(iii) Identify environmentally acceptable sites for dredge spoil disposal.

(3) Increase in public access for recreational purposes, including revitalization of urban waterfront and protection and restoration, where possible, of important historic, cultural and aesthetic coastal resources.

(4) Improvement in the predictability and efficiency of governmental decisionmaking especially with respect to permitting.

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to section 306(c)(9) of the Act. Within areas designated for the purpose of restoring or preserving their ecological or conservation values, section 306 funds may be spent for projects involving expendable materials (as for example, seeds to be used as a non-structural erosion control technique or, for another example, materials to restore lighthouses designated as areas for restoration). All costs associated with such projects may not exceed a total of $50,000 per grant, except in the case of a demonstration grant which may be negotiated with and approved by the Assistant Administrator. In addition the following conditions must be met:

(1) The project must be consistent with and fulfill the objectives of a related policy (or policies) in the State's management program;

(2) Basic program administration requirements discussed in paragraph (c) of this section are provided for;

(3) No other sources of funding are readily available; and

(4) An explanation is provided of how the area will be maintained and operated once preserved or restored.

(e) Section 306 funding in support of any of these purposes, except as limited in paragraph (d) of this section, may be used to fund:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment (subject to the limitations in paragraph (f) of this section), and

(4) Feasibility studies and preliminary engineering reports. A feasibility study is defined as a document, independent of a particular design solution for a project, which presents an analysis of the economic practicality of the project. A preliminary engineering report is defined as a document which presents both engineering criteria, in sufficient detail to form the basis for the preparation of final design documents and detailed engineering cost estimates. Detailed architectural drawings and engineering specifications are eligible costs if:

(i) They are directly related to preservation and restoration projects discussed in (d) of this section;

(ii) They are for projects which are not in APC's but are directly related to the State's management program and the State can provide written documentation to OCZM that the other sources of funding have been secured to complete such projects.

(f) Equipment purchases by the grantee of more than one thousand (1,000) dollars per item require NOAA approval prior to purchase. Equipment purchases by sub-awardees may be approved by the grantee. Such purchases may be deemed eligible costs if the State:

(1) Has examined lease, rental or other non-purchase alternatives and purchase represents an equal or lesser cost alternative, and

(2) The equipment is essential to management activities that are anticipated to continue for more than 1 year.

(g) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 308, 309, 310 and 315 of the Act. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCZM. States should consult with OCZM on technical aspects of consolidating requests into a single application.

§ 923.95 Application for initial program development or implementation grants.

(a) The form SF-424, and an Application for Federal Assistance (Non-Construction Programs) constitutes the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. Grants will not be awarded until A-55 requirements have been completed.

(b) States have the option of using a Preapplication for Federal Assistance. If used, the Preapplication must be submitted 120 days prior to the beginning date of the requested grant. The Preapplication shall include documentation, signed by the Governor, designating the State office, agency, or entity to apply for the administer the grant.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal grant and the matching share. Allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments. Eligible implementation costs also shall be determined in accordance with § 923.94 of these regulations.

(d) In Part IV—Program Narrative of the Form SF-424, the applicant shall describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description shall include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation. Identify, if any, that portion of the task that will be carried out under contract with private firms or individuals and indicate the estimated cost of such contract(s);

(iii) Indicate the estimated total cost. Also indicate the estimated total person-months if any, allocated to the task from the applicant's staff;

(iv) Indicate the percent estimated to be completed during the grant period.

(4) The sum of all task costs in paragraph (d)(3) of this section should equal the total estimated grant project cost.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff who will be assigned to the grant project. Also indicate the number assigned full time and the member assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 923.96 Applications for subsequent program development grants.

(a) Subsequent development grants will follow the procedures set forth in § 923.95. Additionally, the program design discussed in § 923.95(d) shall be updated to:

(1) Describe the anticipated design and content of the management program, including the major issues the program will address, and the policies and management techniques that will be proposed to address these issues;

(2) Describe how the past year's work contributed to the accomplishment of the overall program design and specifically to meeting the requirements for program approval;

(3) Examine and assess the need, if any, to modify the overall program design or the program's goals and objectives or both in view of the above or any emerging opportunities or problems; and

(4) Indicate when the State will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act or for preliminary approval pursuant to subsection 305(d) of the Act.

(b) In evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.97 Applications for subsequent program implementation grants.

(a) Second and subsequent year applications will follow the procedures set forth in § 923.95 except that:

(1) The Governor's document designating the State agency to receive and administer the grant is not required unless there has been an approved change of designation; and

(2) Copies of the approved management program and approved changes are not required.

(b) No award for continued funding pursuant to section 306 will be made until an evaluation of the State's program pursuant to section 312 of the Act has been conducted and findings have been made by the Assistant Administor.

§ 923.98 Applications for preliminary approval grants.

(a) The primary purposes of preliminary approval grants are to assist a State in insuring ultimate implementation of a fully developed program design and to provide for initial implementation of approved management elements. The purpose of these guidelines is to define the procedures by which grantees apply for and administer grants under the Act.

(b) The following represent allowable subsection 305(d) costs:

(1) Resolving section 306 deficiencies;

(2) Implementing those portions of a State's coastal management program for which sufficient authorities and organizational structures are in place;

(3) Updating coastal management programs if this updating would be an allowable cost after section 306 approval.

(c) The Form SF-424 and the Application for Federal Assistance (Non-Construction Programs), constitutes the formal application. An original and two (2) copies must be submitted at least 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. A grant will not be awarded until E.O. 12372 requirements have been completed.

(d) In Part IV, Program Narrative of the Form SF-424, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) A precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approval coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any subawardees that will be allocated responsibility for carrying out all or portions of the tasks, and indicate the estimated cost of the subaward for each allocation, Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total person-months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all task cost in the above paragraph should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indi-

cate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 18595, Mar. 28, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 923.99 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Assistant Administrator may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained in this subpart.

§ 923.100 Grant amendments.

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in Attachment K of OMB Circular A-102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with A-95 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

Subpart K—Improving Coastal Zone Management

AUTHORITY: Secs. 303 and 306, Coastal Zone Management Act and sec. 5, Coastal Zone Management Improvement Act of 1980.

SOURCE: 47 FR 21019, May 17, 1982, unless otherwise noted.

§ 923.101 General.

(a) Statutory citations:

(1) Section 303(2)

The Congress finds and declares that it is the national policy—

* * * * *

(2) To encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to the needs for economic development, which programs should at least provide for—

(A) The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and their habitat, within the coastal zone,

(B) The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(D) Public access to the coasts for recreation purposes,

(E) Assistance in the redevelopment of deteriorating urban waterfronts and ports, sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(F) The coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(G) Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(H) The giving of timely and effective notification of and opportunities for public and local government participation in coastal management decisionmaking, and

(I) Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone.

(2) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program if the Secretary—

(3) Finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal State will expend an increasing portion of each grant received under this section (but not more than 30 per centum of the grant unless the State chooses to expend a higher percentage) on activities that will result in significant improvement being made in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(b) States whose approved programs have been administered for at least one year with section 306 funds must expend an "increasing proportion" of each subsequent section 306 financial assistance award on activities that will result in "significant improvement" in achieving certain national coastal management objectives. This subpart defines "significant improvement," describes the process for determining which significant improvement activities a State may perform, establishes the formula for determining "increasing proportion," and sets forth the consequences of failure to pursue significant improvements.

§ 923.102 Significant improvement defined.

(a) A "significant improvement" is an accomplishment that addresses any of the objectives of section 303(2)(A) through (I) by:

(1) Substantially expanding the scope of the approved program (such expansion of program scope includes, but is not limited to an amendment or routine program implementation), or

(2) Substantially strengthening the ability of the State to implement or enforce the approved program.

(b) Significant improvements include, but are not limited to, the following types of accomplishments:

(1) The adoption of new enforceable policies for coastal decisionmaking of the conversion of nonenforceable (encouragement) policies to enforceable policies. The State (or local government) may adopt new policies by legislation, rulemaking, memoranda of understanding, executive order or other legally sufficient means.

(2) The adoption of refined enforceable policies for coastal decisionmaking including:

(i) More specific standards for the implementation of existing statutes.

(ii) Site specific management plans for areas designated as Areas of Particular Concern and Areas for Preservation or Restoration or other areas beyond what is required by the approved program.

(3) The extension of existing enforceable coastal management policies to new geographic areas beyond what is required by the approved program.

(4) Development of more effective or efficient administration of the approved management program including:

(i) Improved capability of the coastal management agencies to implement State coastal regulatory, planning, and management requirements contained in the approved program.

(ii) Streamlined intergovernmental coordination and public participation mechanisms.

(5) The following to the extent they exceed what is required by an approved program.

(i) Development of natural resource information critical to making informed coastal management decisions.

(ii) Development and implementation of State and local strategies, projects, and management programs for coastal resources and uses.

§ 923.103 Selection and approval of activities leading to significant improvements.

(a) The State will take the initiative in proposing significant improvement activities. The State's financial assistance application will describe the management activities it will perform and the significant improvements it expects to achieve over the course of the next financial assistance award period. This description will clearly identify specific schedules and expected products.

(b) Based on the results of the continuing review described in 15 CFR Part 928, the Assistant Administrator will determine in consultation with the State if the management activities proposed by the State are likely to result in significant improvement in achieving the coastal management objectives of section 303(2)(A) through (I).

(c) The States and the Assistant Administrator will negotiate an agreement at the beginning of each financial assistance award period establishing: (1) The specific significant improvement objectives to be achieved during the financial assistance award period, (2) the Federal funds to be devoted to each task, and (3) the basis for assessing the State's progress in accomplishing each significant improvement task. The agreement will be included as part of the financial assistance award. There is no requirement that the State address each of the nine significant improvement objectives within an individual financial assistance award period.

(d) If unforeseen circumstances arise that affect the accomplishment of any significant improvement task, the State must provide the Assistant Administrator with prompt notice and negotiate with the Assistant Administrator any necessary changes to the schedule and products before the scheduled completion dates. The Assistant Administrator shall provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency. Any such changes will be made part of the agreement included in the financial assistance award.

(e) Significant improvements need not be achieved within the period of one financial assistance award if there is specific reason to identity a longer period.

§ 923.104 Establishing the "increasing proportion".

(a) During the first year a State is required to make significant improvements (its second 306 award), it must agree to expend 20 percent of the Federal share of its upcoming section 306 financial assistance award on activities designed to lead to significant improvements. Thereafter, the State must agree to constant incremental increases of at least one percent in each succeeding year. The amount to be spent on significant improvements will be determined by multiplying the applicable percentage by the amount of Federal funds actually received.

(b) In no case may a State be required to expend more on significant improvement activities than the incremental increases established by this section. However, States may voluntarily exceed the minimum requirement on significant improvement expenditures established by this section. The failure to make significant improvements as a result of those expenditures in excess of the minimum requirement will not result in any reduction in financial assistance under the provisions of § 928.5(a), unless such failure results in an unjustified deviation under § 928.5(b).

§ 923.105 Failure to agree to pursue significant improvements.

(a) If a State chooses not to pursue significant improvements in accordance with this subpart, the Secretary must withhold all financial assistance under section 306. However, a decision not to award section 306 funds does not necessarily require withdrawal of program approval. A State may continue to implement and enforce its approved program with State funds. Under these circumstances, a State will still be able to exercise its Federal consistency review rights under section 307 and will remain eligible for CEIP funds if it meets all other eligibility requirements.

(b) A discussion of the procedures by which the Assistant Administrator will evaluate whether a State has failed to make significant improvements is contained in 15 CFR Part 928, Review of Performance of State Coastal Management and Coastal Energy Impact Programs.

PART 924—MONITOR MARINE SANCTUARY

Sec.
924.1 Authority.
924.2 Description of the Sanctuary.
924.3 Activities prohibited within the Sanctuary.
924.4 Penalties for commission of prohibited acts.
924.5 Permitted activities.
924.6 Permit procedures and criteria.
924.7 Certification procedures.
924.8 Appeals of administrative action.

AUTHORITY: Secs. 302 and 303, Pub. L. 92-532, as amended; 86 Stat. 1061 (16 U.S.C. 1432 and 1433).

SOURCE: 40 FR 21706, May 19, 1975, unless otherwise noted.

§ 924.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Act. The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

§ 924.2 Description of the Sanctuary.

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00′23″ north latitude and 75°24′32″ west longitude.

§ 924.3 Activities prohibited within the Sanctuary.

Except as may be permitted by the Administrator, no person subject to the jurisdiction of the United States shall conduct, nor cause to be conducted, any of the following activities in the Sanctuary:

(a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) Any type of subsurface salvage or recovery operation;

(c) Any type of diving, whether by an individual or by a submersible;

(d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) Detonation below the surface of the water of any explosive or explosive mechanism;

(f) Seabed drilling or coring;

(g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;

(h) Trawling; or

(i) Discharging waste material into the water in violation of any Federal statute or regulation.

§ 924.4 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to Title III of the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Details are set out in Subpart D of Part 922 of this chapter (39 FR 23254, 23257, June 27, 1974). Subpart D is applicable to any instance of a violation of these regulations.

§ 924.5 Permitted activities.

Any person or entity may conduct in the Sanctuary any activity listed in § 924.3 of this part if:

(a) Such activity is either: (1) For the purpose of research related to the MONITOR, or (2) pertains to salvage or recovery operations in connection with an air or marine casualty; and

(b) Such person or entity is in possession of a valid permit issued by the Administrator authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

§ 924.6 Permit procedures and criteria.

(a) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by § 924.5 (hereafter a permitted activity) may apply in writing to the Administrator for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20230. Upon receipt of such application, the Administrator shall request, and such person or entity shall supply to the Administrator, such information and in such form as the Administrator may require to enable him to act upon the application.

(b) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the MONITOR, the Secretary shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the research method(s) envisioned to the purpose(s) of the research; (3) the extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; (4) the end value of the research envisioned; and (5) such other matters as the Administrator deems appropriate.

(c) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Administrator shall consider such matters as: (1) The fitness of the applicant to do the work envisioned; (2) the necessity of conducting such activity; (3) the appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary; (4) the extent to which the conduct of any such activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; and (5) such other matters as the Administrator deems appropriate.

(d) In considering any application submitted pursuant to this Section, the Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, as he deems appropriate; except that, he shall seek and consider the views of the Advisory Council on Historic Preservation.

(e) The Administrator may, in his discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as he deems appropriate, except that the Administrator shall attach to any permit granted for research related to the MONITOR the condition that any information and/or artifact(s) obtained in the research shall be made available to the public. The Administrator may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

(f) A permit granted pursuant to this section is nontransferable.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(The information collection requirements contained in paragraph (a) have been approved by the Office of Management and Budget under control number 0648-0141).

[40 FR 21706, May 19, 1975, as amended at 49 FR 1040, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 924.7 Certification procedures.

Any Federal agency which, as of the effective date of these regulations, already has permitted, licensed or otherwise authorized any prohibited activity in the Sanctuary shall notify the Administrator of this fact in writing. The writing shall include a reasonably detailed description of such activity, the person(s) involved, the beginning and ending dates of such permission, the reason(s) and purpose(s) for same, and a description of the total area affected. The Administrator shall then decide whether the continuation of the permitted activity, in whole or in part, or subject to such condition(s) as he may deem appropriate, is consistent with the purposes of Title III of the Act and can be carried out within these regulations. He shall inform the Federal agency of his decision in these regards, and the reason(s) therefore, in writing. The decision of the Secretary made pursuant to this section shall be final action for the purpose of the Administrative Procedure Act.

§ 924.8 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 924.6 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Secretary may request, and if he does, the Appellant shall provide, such additional information and in such form as the Secretary may request in order to enable him to act upon the appeal. If the Appellant has not requested a hearing, the Secretary shall decide the appeal upon: (1) The basis of the criteria set out in § 924.6(b) or (c) of this part, as appropriate, (2) information relative to the application on file in NOAA, (3) information provided by the Appellant, and (4) such other considerations as he deems appropriate. He shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 30 days of the date of his receipt of the appeal.

(c) If the Appellant has requested a hearing, the Secretary shall grant an informal hearing before a Hearing Officer designated for that purpose by the Secretary after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall be held no later than 30 days following the Secretary's receipt of the appeal. The Appellant and any interested person may appear personally or by counsel at the hearing, present evidence, cross-examine witnesses, offer argument and file a brief. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Secretary based upon the considerations outlined in paragraph (b) of this section and based upon the record made at the hearing.

(d) The Secretary may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Secretary shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 15 days of his receipt of the recommended decision of the Hearing Officer. The Secretary's action, whether without or after a hearing, as the case may be, shall constitute final action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended by the Secretary for good cause, either upon the Secretary's own motion and upon written notification to an Appellant stating the reason(s) therefore, or upon the written request of an Appellant to the Secretary stating the reason(s) therefore, except that no time limit may be extended more than 30 days.

[40 FR 21706, May 19, 1975, as amended at 49 FR 1040, Jan. 6, 1984]

PART 926—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, ALLOCATION OF FUNDS TO STATES

Sec.
926.1 Purpose of rules and regulations.
926.2 Definitions.
926.3 Basis of allocation.
926.4 Allocation of non-distributed funds.
926.5 State allocation computation examples.
926.6 State allocations.
926.7 Duration of allocation.

AUTHORITY: Sec. 305(e), Pub. L. 92-583, as amended; 86 Stat. 1280 (16 U.S.C. 1454).

SOURCE: 40 FR 11863, Mar. 14, 1975, unless otherwise noted.

§ 926.1 Purpose of rules and regulations.

Twelve million dollars has been appropriated by the Congress for Fiscal Year 1975 to implement the Coastal Zone Management Act of 1972 (Pub. L. 92-583) as amended. Of this amount $9 million has been made available for coastal zone management program development grants-in-aid to the 34 coastal States and territories under section 305 of that Act. It is the purpose of this part to establish the rules and regulations for allocation of grant-in-aid funds under section 305 of the Coastal Zone Management Act of 1972, as amended (Pub. L. 92-583; 86 Stat. 1280; and Pub. L. 93-612; 88 Stat. 1974) pursuant to the requirements of section 305(e) which states:

> Grants under this section shall be allocated to the States based on rules and regulations promulgated by the Secretary: *Provided, however,* That no management program development grant under this section shall be made in excess of 10 percentum nor less than 1 percentum of the total amount appropriated to carry out the purposes of this section: *And provided further,* That the Secretary shall waive the application of the 1 percentum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

§ 926.2 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) The term "Act" means the Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 93-612, 88 Stat. 1974.

(b) "Secretary" means the Secretary of Commerce or his designee.

(c) "Coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes specifically Puerto Rico, the Virgin Islands, Guam and American Samoa. This definition is interpreted as including the following States and territories:

1. Alabama
2. Alaska
3. American Samoa
4. California
5. Connecticut
6. Delaware
7. Florida
8. Georgia
9. Guam
10. Hawaii
11. Illinois
12. Indiana
13. Louisiana
14. Maine
15. Maryland
16. Massachusetts
17. Michigan
18. Minnesota
19. Mississippi
20. New Hampshire
21. New Jersey
22. New York
23. North Carolina
24. Ohio
25. Oregon
26. Pennsylvania
27. Puerto Rico
28. Rhode Island
29. South Carolina
30. Texas
31. Virginia
32. Virgin Islands
33. Washington
34. Wisconsin

(d) "Shoreline" means, in tidal waters, the length of "tidal shoreline" as defined by the National Ocean Survey, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and published in that agency's brochure, "The Coastline of the United States." For purposes of computation of the nation's total "tidal shoreline", figures for the Canal Zone, Navassa, Swan Islands, and Baker, Howland, Jarvis, Johnston, Midway, Palmyra, and Wake Islands shall not be included. "Shoreline", in Great Lakes States, shall mean the length of shoreline as established by the Lake Survey Center, National Ocean Survey, NOAA, U.S. Department of Commerce, and contained in an unpublished manuscript entitled, "Shoreline of the Great Lakes and Connecting Rivers" by Robert Hagen and P. H. Judd, dated 1948, with additions made in 1952 by G. E. Ropes and E. F. Kulp, Jr. The total "shoreline" of the United States shall be the sum of the tidal shoreline and Great Lakes shoreline, as defined above.

(e) "Coastal counties" means those counties or parishes which appear, in the judgment of the Assistant Administrator for Coastal Zone Management, NOAA, to abut upon coastal waters. A listing of such counties is available for inspection at the Office of Coastal Zone Management, NOAA, U.S. Department of Commerce, Rockville, Maryland 20852.

§ 926.3 Basis of allocation.

(a) Funds available under section 305 will be allotted to the 34 coastal States and territories on the following basis:

(1) *Uniform allocation.* Each State will initially be allotted the legal minimum of 1 percent of funds available, regardless of size, length of coastline, population, or other factors.

(2) *Variable allocation.* The amount remaining after allocation of the uniform amount will be allocated as follows:

(i) *Shoreline criterion.* Forty percent will be allocated to the coastal States and territories on the basis of shoreline. Each State or territory will receive a shoreline allotment equal to the total amount available under this criterion multiplied by a factor equal to the ratio of that State or territorial shoreline divided by the total national shoreline (including Great Lakes).

(ii) *Population criterion.* Forty percent will be allocated to the coastal States and territories on the basis of coastal population. It is the intent of the Office of Coastal Zone Management to include that population which is included within the "coastal zone" as defined in section 304(a) of the Act and as used in the allocation system for grants under section 306 as described in section 306(b). However, since no State or territory has as yet formally identified its "coastal zone" pursuant to the Act, the Office will initially utilize the population of the coastal zone as recorded in the 1970 decennial U.S. Census contained within coastal counties (or parishes) as defined in § 926.2. Since this designation is judgmental, it is subject to change in subsequent fiscal years, based upon the inclusion or exclusion of certain counties, or upon definition of the coastal zone by a State. The coastal population used herein has been increased from that computed for FY 1974 by the inclusion of additional counties in California, Florida, Louisiana, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, South Carolina, Texas and Virginia.

(iii) *Needs criterion.* Twenty percent will be reserved for additional allocation to the coastal States and territories at the discretion of the Assistant Administrator for Coastal Zone Management, based upon demonstration of need for such funds in order to assure completion of work designated by the State or territory as necessary to the timely completion of a coastal zone management program. Examples of such need may include, but need not be limited to:

(A) States or territories which have a legislative mandate, or express a strong desire to complete development of their programs in less than three years and specifically require such funds.

(B) States or territories which contain geographic coastal areas with particularly pressing developmental problems whose resolution in a management program would be materially assisted by additional funds.

(C) States or territories which propose particularly creative or innovative elements in the management program development phase where there is apparent national applicability.

(D) States or territories where special institutional conditions exist which require additional funds and for which adequate account is not made in the shoreline and/or population criteria.

(b) The minimum figure shown for each coastal State or territory in § 926.6 represents the sum of the uniform allocation, and the shoreline and population criteria of the variable allocation only; it does not include any allocation under the needs criterion. Such funds will be available to them for Fiscal Year 1975, in the event they:

(1) Choose to participate in the program,

(2) Can provide the necessary matching funds,

(3) Submit a satisfactory application and work program pursuant to the conditions set forth in Part 920 of this chapter, and

(4) Otherwise meet the applicable requirements of the Coastal Zone Management Act of 1972, as amended.

States need not utilize nor be limited by the minimum amount allocated and applications may be made for any amount deemed appropriate: *Provided*, That the statutory maximum or minimum of 10 percent and 1 percent of all appropriations, respectively, is not exceeded, except upon request of a State for waiver of the 1 percent minimum.

§ 926.4 Allocation of non-distributed funds.

Those funds allocated to coastal States and territories which choose not to participate in the program as well as those funds which are allocated but which States or territories choose not to utilize, will be added to those funds to be distributed to the States and territories on the basis of the needs criterion, as will any amounts in excess of the 10 percent maximum limitation.

§ 926.5 State allocation computation examples.

The following computation indicates the procedure by which a State's minimum allocation is derived. As an example, the State of Massachusetts was selected.

Basic information:

U.S. shoreline: 95,223 miles.
Massachusetts shoreline: 1,519 miles.
U.S. coastal population: 89,086,762.
Massachusetts coastal population: 2,862,290.

Total funds available for sec. 305 grants in fiscal year 1975: $9,000,000.

National allocation by criteria:	
Uniform allocation: 1 percent × $9,000,000 × 34 States	$3,060,000
Variable allocation:	
Shoreline criterion: 40 percent × ($9,000,000 ' 3,060,000)	2,376,000
Population criterion: 40 percent × ($9,000,000 ' 3,060,000)	2,376,000
Needs criterion: 20 percent × ($9,000,000'3,060,000)	1,188,000
Total	9,000,000
Minimum State allocation (Massachusetts):	
Uniform allocation: 1 percent × $9,000,000	90,000
Variable allocation:	
Shoreline criterion:	
1,519 miles	
95,223 miles × $2,376,000	
Population criterion:	
2,862,290	
89,086,762 × $2,376,000	76,270
Minimum Massachusetts allocation	204,048

To this minimum allocation may be added an appropriate amount from the needs criterion funds.

§ 926.6 State allocations.

Using the method described in § 926.5 of this part, allocations (excluding needs criterion funds) for each eligible State and territory follow:

1. Alabama [1]	$115,000
2. Alaska (maximum)	900,000
3. American Samoa	94,000
4. California	620,000
5. Connecticut	156,000
6. Delaware	114,000
7. Florida	446,000
8. Georgia	156,000
9. Guam	95,000
10. Hawaii	137,000
11. Illinois	248,000
12. Indiana	111,000
13. Louisiana	342,000
14. Maine	189,000
15. Maryland	249,000
16. Massachusetts	204,000
17. Michigan	301,000
18. Minnesota	101,000
19. Mississippi	105,000
20. New Hampshire	99,000
21. New Jersey	284,000
22. New York	567,000
23. North Carolina	188,000
24. Ohio	178,000
25. Oregon	156,000
26. Pennsylvania	169,000
27. Puerto Rico	180,000
28. Rhode Island	125,000
29. South Carolina	176,000
30. Texas	254,000
31. Virginia	222,000
32. Virgin Islands	96,000
33. Washington	233,000
34. Wisconsin	162,000
Subtotal	7,772,000
Needs criterion allocation [2]	1,228,000
Total	9,000,000

[1] Rounded to nearest $1,000.
[2] Includes $42,271 excess over 10 percent limit in Alaska.

§ 926.7 Duration of allocation.

The allocations as determined and computed above are published for the distribution of coastal zone management program development grants during Fiscal Year 1975, which is the second year for which these funds are available. NOAA will monitor the progress of States under this program and make an assessment during Fiscal Year 1975 of the relative financial needs of the States. This assessment may lead to alterations in the method of allocation and the allocation figures for fiscal years subsequent to Fiscal Year 1975. Such revisions will be duly published.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

§ 927.1 Allocation formula.

(a) Statutory citation. (1) Section 306(a).

> The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program . . .

(2) Section 306(b).

> Such grants shall be allocated to the States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided*, That no annual grant made under this section shall be less than one per centum of the total amount appropriated to carry out the purposes of this section: *And provided further*, That the Secretary shall waive the application of the one per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

(b) *Minimum/maximum allocation.* The Assistant Administrator may establish minimum and maximum State allocations.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) of this section, and in accordance with the provisions of section 312(a), (c), and (d). Award levels may fall below the one percent minimum established under section 306(b) for purposes of implementing section 312(c) of the Act.

(Secs. 306 and 317 of the Coastal Zone Management Act)

[47 FR 21021, May 17, 1982]

PART 928—REVIEW OF PERFORMANCE

Sec.
928.1 General.
928.2 Definitions.

Sec.
928.3 Procedure for conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.
928.4 Public participation.
928.5 Enforcement.

AUTHORITY: Secs. 312 and 316, Coastal Zone Management Act, as amended.

SOURCE: 47 FR 21021, May 17, 1982, unless otherwise noted.

§ 928.1 General.

(a) These regulations set forth the requirements for review of approved State Coastal Zone Management (CZM) programs pursuant to section 312 of the Act, and of State coastal energy impact programs pursuant to sections 312 and 316 of the Act. They define "continuing review" and other important terms, and set forth the procedures for:

(1) Conducting continuing reviews of approved State CZM programs and State coastal energy impact programs,

(2) Providing for public participation,

(3) Reducing financial assistance for failure to make significant improvement, and

(4) Withdrawing program approval and financial assistance.

§ 928.2 Definitions.

(a) "Continuing review" means monitoring State performance throughout the period of the work program. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every two years but not more than once every year. Evaluations of coastal energy impact programs will be conducted on a schedule to be determined by the Assistant Administrator.

(b) "Adherence" means to comply with the approved CZM program and financial assistance award or work program.

(c) "Justifiable" means that the State must show that the deviation(s) from the approved CZM program was warranted. This determination will be made by the Assistant Administrator in consultation with the State on a case-by-case basis. The principal criterion to be used in making this determination is the extent to which the deviation was beyond State control. Other criteria, including, but not limited to, the following will be considered:

(1) The extent to which the deviation impairs the ability of the program to achieve its goals and objectives;

(2) Whether the deviation is part of a pattern or is an isolated incident;

(3) The magnitude of the deviation.

(d) "Approved CZM program" means those elements of the program required for program approval by the Secretary, under 15 CFR Part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) "Financial assistance award" means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

(1) The work program described in the approved application;

(2) The budget;

(3) The standard terms and conditions of the award;

(4) Any special award conditions included with the award;

(5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) "Work program" means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management or the NOAA Official responsible for directing the Federal coastal zone management program.

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.

(a) Statutory citations: (1) Subsection 312(a).

> The Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in Section 303(2)(A)-(I), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(2) Section 316. Section 316 includes a provision for a biennial Coastal Zone Management Report which must include:

> * * * a description of the economic, environmental, and social consequences of energy activities affecting the coastal zone and an evaluation of the effectiveness of financial assistance under Section 308 in dealing with such consequences.

(b) Continuing review procedures. (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) Within 45 days of receipt of State comments, the Assistant Administrator will issue final findings. This period may be extended upon notification to the State. Notice of the availability of the final findings will be published in the FEDERAL REGISTER. Copies will be sent to the head of the State CZM agency, the State program manager, and any person who requests them.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in section 303(2)(A) through (I); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 928.2(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) *Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2)(A) through (I).* The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2)(A) through (I) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in Section 303.

(iii) The findings and recommendations concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award, if any. The evaluation required by section 312(c), concerning whether a coastal State is "failing to make significant improvement in achieving the coastal management objectives," is detailed in § 928.5(a).

(4) *Procedure for assessing adherence to the terms of financial assistance awards.* (i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 928.3(c)(4).

§ 928.4 Public participation.

(a) Statutory citation, section 312(b):

For the purpose of making the evaluation of a coastal State's performance, the Secre-

> tary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

(b) Requirements. (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the FEDERAL REGISTER at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) on its evaluation in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held or take other reasonable action to inform the interested public, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings to the public upon request will be published in the FEDERAL REGISTER.

§ 928.5 Enforcement.

(a) Reduction of financial assistance for failure to make significant improvement. (1) Statutory citation section 312(c):

> The Secretary shall reduce any financial assistance extended to any coastal State under Section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal State under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal State is failing to make significant improvement in achieving the coastal management objectives specified in Section 303(2)(A)-(I).

(2) Requirements. (i) The evaluation will examine whether the State is accomplishing the significant improvement tasks in accordance with specific schedules and expected products negotiated between the State and the Assistant Administrator before the beginning of each financial assistance award, in accordance with the procedures in 15 CFR 923.103.

(ii) If the Assistant Administrator finds, during the continuing review, that the State is not achieving one or more significant improvement objectives as negotiated, the State will be given an opportunity to demonstrate that it can accomplish the objective(s), as prescribed in the financial assistance award, before its expiration.

(iii) If the State cannot make this demonstration to the Assistant Administrator's satisfaction, the Assistant Administrator will determine that the State is failing to make satisfactory progress toward significant improvement in accordance with the previously negotiated agreement.

(iv) Based on this determination, the agency will reduce a State's financial assistance award and withdraw any unexpended portion of the current award by no more than the percentage required to be devoted to making significant improvements for that year. The reduction or withdrawal shall be proportional to the amount of funds allocated to tasks that have failed to result in satisfactory progress in achieving significant improvement.

(b) Withdrawal of program approval and financial assistance. (1) Statutory citation, sections 312(d) and 312(e):

> (d) The Secretary shall withdraw approval of the management program of any coastal State, and shall withdraw any financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under Section 306, and refuses to remedy the deviation.
>
> (e) Management program approval and financial assistance may not be withdrawn under Subsection (d), unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this Subsection (d), the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) Requirements. (i) If the Assistant Administrator finds that a State is failing to adhere to, and is not justified in deviating from, its approved CZM program or those terms of its section 306 financial assistance award specifically implementing the approved CZM program, the agency will provide the State with written notice of this finding and the agency's obligation to withdraw program approval and financial assistance under this title. This notice will set forth the deviation(s) from the approved CZM program or the financial assistance award and will include specifications of the actions that must be taken in order to remedy the deviation(s). The State will be given 30 days from receipt of this notice to respond with evidence of adherence or justification for its deviation(s). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence of adherence or justification within 30 days of publication of this notice, the agency will decide whether to withdraw program approval and financial assistance and the agency will notify the State in writing of the decision and the reasons for it. The notification will set forth actions by the State which would cause the Secretary to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY FINAL REGULATIONS

Sec.

929.1 Authority.
929.2 Purpose.
929.3 Boundaries.
929.4 Definitions.
929.5 Management and enforcement.
929.6 Allowed activities.
929.7 Activities prohibited or controlled.
929.8 Other authorities.
929.9 Penalties for commission of prohibited acts.
929.10 Permit procedures and criteria.
929.11 Appeals of administrative action.

AUTHORITY: Title III of Pub. L. 92-532, 86 Stat. 1061, 1062 (16 U.S.C. 1431-1434).

SOURCE: 48 FR 55118, Dec. 9, 1983, unless otherwise noted.

§ 929.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as amended (the Act). The following regulations are issued pursuant to Title III of the Act.

§ 929.2 Purpose.

The purpose of designating the Key Largo National Marine Sanctuary is to protect and preserve the coral reef ecosystem in its natural state and to regulate uses within the Sanctuary to ensure the health and well-being of the coral and associated flora and fauna.

§ 929.3 Boundaries.

The Sanctuary consists of a portion of the Atlantic Ocean beginning at approximately three miles east of Key Largo, Florida, adjacent to the John Pennekamp Coral Reef State Park. The coordinates for the Sanctuary are: The point of beginning (POB) is at geographic coordinates 25° (degrees), 19.45′ (minutes) north latitude, 80°, 12.0′ west longitude, said point being the northeast boundary corner of John Pennekamp Coral Reef State Park. From said POB run thence southeasterly to geographic coordinates 25°, 16.2′ north latitude 80°, 8.7′ west longitude, said point also being on the 300 foot isobath, thence in a southwesterly direction to geographic coordinates 25°, 07.5′ north latitude, 80°, 12.5′ west longitude, thence again run in a southwesterly direction to geographic coordinates 24°, 58.3′ north latitude, 80°, 19.8′ west longitude, thence leaving said 300 foot isobath run northwesterly to geographic coordinates 25°, 2.2′ north latitude, 80°, 25.25′ west longitude, said point being the southeast boundary corner of John Pennekamp Coral Reef State Park, thence in a northeasterly direction along said easterly boundary of said State Park to the POB.

§ 929.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, or his/her successor, or designee.

(c) "Persons" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State or local unit of the government.

(d) "The Sanctuary" means the Key Largo National Marine Sanctuary.

(e) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with corals and coral reef substrates.

§ 929.5 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. NOAA's responsibilities under the Act require that the Sanctuary Programs Division review, consider, and approve any activities that take place in the Sanctuary in accordance with these rules and regulations. The U.S. Coast Guard and the Florida Department of Natural Resources, Division of Recreation and Parks (FDNR) shall conduct surveillance and enforcement of these regulations pursuant to 14 U.S.C. 89, 16 U.S.C. 1432 (f)(4), 16 U.S.C. 7421 (b), 16 U.S.C. 3375 (a), or other appropriate legal authority.

§ 929.6 Allowed activities.

All activities except those specifically prohibited by § 929.7 or other applicable authority may be undertaken within the Sanctuary subject to the restrictions and conditions imposed by other authorities.

§ 929.7 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 929.10, or as may be necessary for the national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled within the Sanctuary. All prohibitions and controls must be applied consistently with international law. Refer to § 929.9 for penalties for commission of prohibited acts.

(1) *Removal or damage of natural features, marine life and archaeological and historical resources.* (i) No person shall destroy, injure, harmfully disturb, break, cut or similarly damage or remove any coral or other marine invertebrate, or any plant, soil, rock, or other material, except that commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand which is consistent with both the applicable regulations under the appropriate Fishery Management Plan and these regulations is allowed. Divers are prohibited from handling coral formations, standing on coral formations, or otherwise disturbing the corals.

(ii) No person shall catch or collect any tropical fish.

(iii) No person shall remove, deface, damage, or tamper with archaeological or historical resources or the cargo of any submerged wrecks or other historircal resources within the boundaries of the Sanctuary.

(iv) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Dredging, filling, excavating and building activities.* No person shall dredge, excavate, fill or otherwise alter the seabed in any way nor construct any structure of any kind, whether permanent or temporary, with the exception of navigation aids.

(3) *Discharges.* No person shall deposit or discharge any materials or substance of any kind into the waters of the Sanctuary. The only exceptions are:

(i) Fish or fish parts and chumming materials;

(ii) Cooling waters from vessels; and

(iii) Effluent from marine sanitation devices approved by the United States Coast Guard.

(4) *Tampering with markers.* No person shall mark, deface or damage in any way whatsoever, or displace, remove or tamper with any signs, notices or placards, whether temporary of permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, scientific equipment or other boundary markers installed by the Sanctuary Manager, or trap floats placed for the purpose of lobster fishing.

(5) *Use of harmful fishing methods.* No person shall use within the Sanctuary, or shall carry or possess, except while passing without interruption through the Sanctuary or for law enforcement purposes, the following firearms or weapons: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring loaded guns, explosive powered guns or similar devices known as spearguns. No person shall use within the Sanctuary:

(i) Wire fish traps;

(ii) Bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or net; or

(iii) Poisons, electric charges, explosives or similar devices.

(6) *Operation of watercraft and anchoring.* All watercraft shall be operated in accordance with applicable Federal rules and regulations. The following additional regulations apply within the boundaries of the Sanctuary.

(i) Watercraft shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(ii) Watercraft must use mooring buoys, stations or anchoring arms when such facilities have been provided.

(iii) No anchor shall be cast or dragged in such a way as to damage any coral reef formations. Anchors shall be dropped only on sand flats off the reefs and be placed to avoid dragging into the coral formations.

(iv) Within 100 yards of divers, sightseeing boats or fishermen, no watercraft shall be operated at a speed greater than 4 knots or in any manner to create a wake, except by law enforcement officials while in the performance of their official duties.

(v) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner the red and white "divers down" flag. Divers shall stay within 100 yards of their diving flag.

(7) *Use of dangerous weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(b) The Sanctuary may be closed to public use in the event of emergency conditions endangering life or property. The Assistant Administrator or his/her designee may also close certain areas in order to permit recovery of the living resources from overuse, or provide for scientific research relating to protection and management. However, the total closed area shall not exceed a size necessary to accomplish these purposes. Public notice of closures will be provided through the local news media and posting of placards at the John Pennekamp Coral Reef State Park, if deemed necessary.

(c) The regulation of activities within the Sanctuary shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent possible.

(d) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 929.8 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 929.7 unless such activity meets the criteria stated in § 929.10 (a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 929.9 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply the consolidated civil procedure regulations set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.243), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219) to all enforcement matters under the Act.

§ 929.10 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct in the Sanctuary activities specified in the permit including any activity specifically prohibited under § 929.7, if such activity is: (1) Research related to the resources of the Sanctuary; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator, Attn: Sanctuary Programs Division, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

This information collection has been approved by the Office of Management and Budget (approval number 0648-0141) for use through October 31, 1986.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and (4) the end value of the activity.

(d) In addition to meeting the criteria in § 929.10 (a) and (c), the applicant must also satisfactorily demonstrate to the Assistant Administrator:

(1) That adequate safeguards shall be provided to protect the environment; and (2) that the environment shall be returned to the condition which existed before the activity occurred.

Permits shall be appropriately conditioned, and monitored by NOAA to ensure compliance.

(e) In considering an application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of Regional Fishery Management Councils and any other person or entity, within or outside of the Federal government, and may hold a public hearing, as he/she deems appropriate.

(f) The Assistant Administrator may grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed necessary, and may attach to any permit granted for research related to the Sanctuary stipulations requiring that: (1) The Assistant Administrator or a designated representative may observe and monitor any activity permitted by this section; (2) any information obtained in the research site shall be made available to the public; (3) periodic reports of the status of progress of such activity be submitted; and (4) the permittee shall fly the Sanctuary research flag while working in the Sanctuary.

(g) A permit granted pursuant to this section is nontransferrable.

(h) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or Permittee has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or Permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 929.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, the applicant for a permit or the Permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 929.10 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, and the permit applicant or permittee if other than the appellant, to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 929.10 (a), (c) and (d) and any information relative to the aplication on file, any information provided by the appellant, and such other consideration as is deemed appropriate. The Administrator shall notify the appellant of the final decision and the reason(s) therefor, in writing, normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested or, if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose, after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee if different, and, other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984]

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—Objectives

Sec.
930.1 Overall objectives.

Subpart B—General Definitions

930.10 Index to definitions.
930.11 Act.
930.12 Section.
930.13 Secretary.
930.14 Executive Office of the President.
930.15 OCZM.
930.16 Assistant Administrator.
930.17 Federal agency.
930.18 State agency.
930.19 Management program.
930.20 Coastal zone.
930.21 Associated facilities.

Subpart C—Consistency for Federal Activities

930.30 Objectives.
930.31 Federal activity.
930.32 Consistent to the maximum extent practicable.
930.33 Identifying Federal activities directly affecting the coastal zone.
930.34 Federal agency consistency determinations.
930.35 Federal and State agency coordination.
930.36 Availability of mediation for negative determination disputes.
930.37 Consistency determinations for proposed activities.
930.38 Consistency determinations for activities initiated prior to management program approval.
930.39 Content of a consistency determination.
930.40 Multiple Federal agency participation.
930.41 State agency response.
930.42 State agency disagreement.
930.43 Availability of mediation for disputes concerning proposed activities.
930.44 Availability of mediation for previously reviewed activities.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

930.50 Objectives.
930.51 Federal license or permit.
Sec.
930.52 Applicant.
930.53 Management program license and permit listing.
930.54 Unlisted Federal license and permit activities.
930.55 Availability of mediation for license or permit disputes.
930.56 State agency guidance and assistance to applicants; information requirements.
930.57 Consistency certifications.
930.58 Necessary data and information.
930.59 Multiple permit review.
930.60 Commencement of State agency review.
930.61 Public notice.
930.62 Public hearings.
930.63 State agency concurrence with a consistency certification.
930.64 State agency objection to a consistency certification.
930.65 Federal permitting agency responsibility.
930.66 Availability of mediation for previously reviewed activities.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

930.70 Objectives.
930.71 Federal license or permit activity described in detail.
930.72 Person.
930.73 OCS plan.
930.74 OCS activities subject to State agency review.
930.75 State agency assistance to persons; information requirements.
930.76 Submission of an OCS plan and consistency certification.
930.77 Necessary data and information.
930.78 Commencement of State agency review; public notice.
930.79 State agency concurrence or objection.
930.80 Effect of State agency concurrence.
930.81 Federal permitting agency responsibility.
930.82 Multiple permit review.
930.83 Amended or new OCS plans.
930.84 Review of amended or new OCS plans; public notice.
930.85 Continuing State agency objections.
930.86 Failure to comply substantially with an approved OCS plan.

Subpart F—Consistency for Federal Assistance to State and Local Governments

930.90 Objectives.
930.91 Federal assistance.
930.92 Applicant agency.
930.93 Intergovernmental review process.

Sec.
930.94 State intergovernmental review process for consistency.
930.95 Guidance provided by the State agency.
930.96 Consistency review.
930.97 Federal assisting agency responsibility.
930.98 Federally assisted activities outside of the coastal zone or the described geographic area.
930.99 Availability of mediation for Federal assistance disputes.
930.100 Availability of mediation for previously reviewed activities.

Subpart G—Secretarial Mediation

930.110 Objectives.
930.111 Informal negotiations.
930.112 Request for mediation.
930.113 Public hearings.
930.114 Secretarial mediation efforts.
930.115 Termination of mediation.
930.116 Judicial review.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

930.120 Objectives.
930.121 Consistent with the objectives or purposes of the Act.
930.122 Necessary in the interest of national security.
930.123 Appellant.
930.124 Informal discussions.
930.125 Appeals to the Secretary.
930.126 Federal and State agency responses to appeals.
930.127 Public notice; receipt of comments.
930.128 Dismissal of appeals.
930.129 Public hearings.
930.130 Secretarial review.
930.131 Federal agency responsibility.
930.132 Review initiated by the Secretary.
930.133 Public notice; receipt of comments; public hearings.
930.134 Secretarial review; Federal agency responsibility.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

930.140 Objectives.
930.141 Notification of Federal actions believed to be inconsistent with approved management programs.
930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.
930.143 Assistant Administrator reporting.

Sec.
930.144 Assistant Administrator advisory statements.
930.145 Review of the implementation of the Federal consistency provisions.

AUTHORITY: Secs. 307, 316 and 317, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 94-370, 90 Stat. 1013, unless otherwise noted.

SOURCE: 44 FR 37143, June 25, 1979, unless otherwise noted.

Subpart A—Objectives

§ 930.1 Overall objectives.

The objectives of these regulations are: (a) To describe the obligations of all agencies, individuals and other parties who are required to comply with the Federal consistency provisions of the Coastal Zone Management Act;

(b) To implement the Federal consistency provisions in a manner which strikes a balance between the need to ensure consistency for Federal actions affecting the coastal zone with approved coastal management and the need to promote Federal programs;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the Federal consistency provisions of the Act are satisfied;

(d) To interpret significant terms in the Federal consistency provisions so that they can be uniformly understood and adhered to by all agencies, individuals and other affected parties;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the objectives, policies, standards and other criteria set forth in, or referenced as part of, approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs;

(g) To provide procedures which permit the Secretary to review Federal license or permit activities, or Federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security;

(h) To provide procedures which permit interested parties to notify the Assistant Administrator for Coastal Zone Management of Federal actions believed to be inconsistent with approved coastal management programs, or believed to have been incorrectly determined to be inconsistent with an approved management program; and

(i) To provide procedures for the reporting of any Federal actions found by the Assistant Administrator for Coastal Zone Management to be inconsistent with an approved coastal zone management program, and for the performance review of State implementation of the Federal consistency provisions.

Subpart B—General Definitions

§ 930.10 Index to definitions.

The following list includes all terms defined in Part 930 of this title keyed to the section or paragraph in which they are defined.

Term	Section
Act	930.11
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.16
Associated facilities	930.21
Coastal Zone	930.29
Consistent to the maximum extent practicable	930.32
Consistent with the objectives or purposes of the Act	930.121
Development project	930.31(b)
Executive Office of the President	930.14
Failure substantially to comply with an OCS plan	930.86(d)
Federal activity	930.31
Federal agency	930.17
Federal assistance	930.91
Federal license or permit	930.51
Federal license or permit activity described in detail	930.71
Management program	930.19
Necessary in the interest of national security	930.122
OCS plan	930.73
OCZM	930.15
OMB A-95 process	930.93
Person	930.72
Secretary	930.13
Section	930.12
State agency	930.18

§ 930.11 Act.

The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

§ 930.12 Section.

The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

§ 930.13 Secretary.

The term "Secretary" means the Secretary of the U.S. Department of Commerce.

§ 930.14 Executive Office of the President.

The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

§ 930.15 OCZM.

The term "OCZM" means the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.16 Assistant Administrator.

The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.17 Federal agency.

The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the Federal government, or any wholly owned Federal government corporation.

§ 930.18 State agency.

(a) The term "State agency" means the agency of the State government designated pursuant to section

306(c)(5) of the Act to receive and administer grants for an approved coastal management program, or a single designee State agency appointed by the 306(c)(5) State agency. Any appointment by the 306(c)(5) State agency of a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and Federal assistance proposals shall be sent to and reviewed by the 306(c)(5) State agency.

(b) The State agency is responsible for commenting on Federal agency consistency determinations (see Subpart C of this part), concurring with or objecting to consistency certifications for Federal licenses, permits, and Outer Continental Shelf plans (see Subparts D and E of this part), and reviewing the consistency of Federal assistance activities proposed by State or local government agencies (see Subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies. Thereafter, only the State agency is authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity.

§ 930.19 Management program.

The term "management program" has the same definition as provided in section 304(11) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

§ 930.20 Coastal zone.

The term "coastal zone" has the same definition as provided in section 304(1) of the Act.

§ 930.21 Associated facilities.

The term "associated facilities" describes all proposed facilities:

(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a Federal action (e.g., activity, development project, license, permit, or assistance), and

(b) Without which the Federal action, as proposed, could not be conducted.

All further requirements in this part related to the review of and consistency for Federal activities including development projects (see Subpart C of this part), Federal license and permit activities (see Subparts D and E of this part) and Federal assistance activities (see Subpart F of this part) also apply to associated facilities related to those Federal actions. Therefore, the proponent of a Federal action must consider whether the Federal action and its associated facilities affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the Act.

Subpart C—Consistency for Federal Activities

§ 930.30 Objectives.

The provisions of this subpart are provided to assure that all federally conducted or supported activities including development projects directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

§ 930.31 Federal activity.

(a) The term "Federal activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

(c) The term "Federal activity" does not include the issuance of a Federal license or permit to an applicant or person (see Subparts D and E of this part) or the granting of Federal assistance to an applicant agency (see Subpart F of this part).

§ 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

The duty the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, when read together, sections 307(c) (1) and (2) and 307(e) require Federal agencies, whenever legally permissible, to consider State-management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

§ 930.33 Identifying Federal activities directly affecting the coastal zone.

(a) Federal agencies shall determine which of their activities directly affect the coastal zone of States with approved management programs.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone.

(c)(1) Federal activities outside of the coastal zone, as defined in Section 304(1) of the Act, are subject to Federal agency review to determine whether they directly affect the coastal zone.

(2) OCS oil and gas lease sale activities conducted pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) are not Federal activities which directly affect the coastal zone within the meaning of Section 307(c)(1) of the Act, and, therefore, are not subject to review under this Subpart.

[44 FR 37143, June 25, 1979, as amended at 50 FR 35213, Aug. 30, 1985]

§ 930.34 Federal agency consistency determinations.

(a) Federal agencies shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. The Federal agency may provide the State agency with this information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

§ 930.35 Federal and State agency coordination.

(a) State agencies should list in their management programs Federal activities which, in the opinion of the State agency, are likely to directly affect the coastal zone and require a Federal agency consistency determination.

Listed Federal activities must be described in terms of the specific type of activity involved (e.g., Federal reclamation projects). In the event the State agency chooses to describe Federal activities outside of the coastal zone but likely to directly affect the coastal zone, it must also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(b) State agencies should monitor unlisted Federal activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review, review of National Environmental Policy Act (NEPA) environmental impact statements, etc.) and should notify Federal agencies of unlisted Federal activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, directly affect the coastal zone and require a Federal agency consistency determination. State agencies must notify Federal agencies within 45 days from receipt of notice of the unlisted Federal activity, otherwise the State agency waives its right to request a consistency determination. The waiver does not apply in cases where the State agency does not receive notice of the Federal activity (e.g., for those Federal activities which are not processed through Intergovernmental Review Process established pursuant to E.O. 12372, NEPA review or a similar procedure which permits State agency monitoring).

(c) The recommended listing and monitoring procedures described in paragraphs (a) and (b) of this section are neither a substitute for nor eliminate Federal agency responsibility under §§ 930.33(b) and 930.34 to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal activities which the Federal agency finds directly affect the coastal zone.

(d) If a Federal agency decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the Federal agency shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.36 Availability of mediation for negative determination disputes.

In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in Subpart G.

§ 930.37 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal activities which directly affect the coastal zone in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with approved State management programs. Federal agencies are encouraged to consult with State agencies during their efforts to assess whether such activities will be consistent to the maximum extent practicable with such programs.

(b) In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a direct effect upon the coastal zone, the agency may develop a general consistency determination thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Federal decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination will be required for ongoing Federal activities other than development projects (e.g., waste disposal practices) initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination shall be required for major, phased Federal development project decisions described in § 930.37(c) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider coastal zone effects not fully evaluated at the outset of the project. This provision shall not apply to phased Federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to the National Environmental Policy Act).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity (e.g., project siting and constuction), its direct effects (e.g., air, water, waste discharges, etc.), and associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, etc.) and the direct effects of the associated facilities (e.g., erosion, wetlands, beach access impacts, etc.) must all be consistent to the maximum extent practicable with the management program. Although nonassociated facilities (e.g., recreational housing which is induced by but not necessarily related to a Federal harbor dredging project—see § 930.21) must be included within the consistency determination's description of the direct effects of the activity, Federal agencies are not responsible for evaluating the consistency of such facilities.

(c) In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to management program provisions which are in the nature of recommendations. Finally, Federal agencies do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the State's management program, the Federal agency may continue to apply its stricter standards (e.g., restrict project development or design alternatives notwithstanding permissive management program policies). In such cases the Federal agency should inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in conducting or supporting a Federal activity or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities related to each other because of their geographic proximity, consideration should be given to the preparation of one consistency determination for all the Federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination (a) must be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies, (b) must indicate whether or not each of the proposed activities is consistent to the maximum extent practicable with the management program, and (c) must include information on each proposed activity sufficient to support the consistency determination.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its agreement or disagreement with the Federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the Federal agency notification, the State agency should at that time inform the Federal agency of the status of the matter and the basis for further delay. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the Federal agency and the State agency agree to an alternative period (see § 930.34(b)).

§ 930.42 State agency disagreement.

(a) In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see § 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§ 930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in Subpart G.

§ 930.44 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in Subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term "Federal license or permit" means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of Subpart C of this part.

§ 930.53 Management program license and permit listing.

(a) During management program development, Federal agencies should assist State agencies in identifying Federal license and permit activities which reasonably can be expected to affect the coastal zone.

(b) State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the Federal license and permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits, etc.). In the event the State agency chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities.

(c) If a State agency wishes to avoid repeated review of minor Federally permitted activities which, while individually inconsequential, cumulatively cause effects on the coastal zone, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (see § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor Federal license and permit activities and the relevent conditions which are covered by the general concurrence. Minor Federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of Federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(d) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval of additions or deletions by the Assistant Administrator. The State agency shall provide copies of the list and any amendments to Federal agencies and shall make the information available to the public.

(e) No Federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses and permits of the requirements of this subpart.

§ 930.54 Unlisted Federal license and permit activities.

(a) With the assistance of Federal agencies, State agencies should monitor unlisted Federal license and permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA environmental impact statements, etc.) and shall immediately notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. State agencies must inform the Federal agency and applicant within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the Federal license or permit activity.

(b) The State agency must also notify the Assistant Administrator of unlisted Federal license or permit activities which the State agency believes should be subject to State agency review. Following State agency notification to the Federal agency, applicant and the Assistant Administrator, the Federal agency may not issue the license or permit until the requirements of this subpart have been satisfied, unless the Assistant Administrator disapproves the State agency decision to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Assistant Administrator regarding the State agency's decision to review the activity. The sole basis for the Assistant Administrator's approval or disapproval of the State agency's decision will relate to whether the proposed activity can be reasonably expected to affect the coastal zone of the State. The Assistant Administrator shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice.

(d) In the event of disapproval by the Assistant Administrator, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Assistant Administrator approves the State agency's decision, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Assistant Administrator, the applicant shall amend the Federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary supporting data and information (see §§ 930.63 and 930.64). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (see paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and accompanying information, whichever period terminates last.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (see § 930.53) or individually approved by the Assistant Administrator (see § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Assistant Administrator approval.

§ 930.56 State agency guidance and assistance to applicants; information requirements.

(a) As a preliminary matter, any applicant for a Federal license or permit selected for review by a State agency should obtain the views and assistance of that agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to assess the consistency of Federal license and permit activities. Required data and information may not include confidential and proprietary material. In the case of approved amendments, State agencies shall send copies to relevant Federal agencies who shall, in turn, provide the information requirements to applicants. If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by § 930.58.

§ 930.57 Consistency certifications.

(a) When satisfied that the proposed activity meets the Federal Consistency requirements of this subpart, all applicants for Federal licenses or permits subject to State agency review shall provide in the application to the Federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with (name of State) approved coastal management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to § 930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (a) (3) and (4) of this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related Federal license and permit activities affecting the coastal zone for State agency review. State agencies shall, to the extent practicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license and permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public notice.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. At a minimum the provision of public notice must be in accordance with State law. In addition, public notice must be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. Public notice shall be expanded in proportion to the degree of likely public interest resulting from the unique geographic area involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good cause.

(b) Public notice shall facilitate public comment by providing a summary of the proposed activity, by announcing the availability for inspection of the consistency certification and accompanying public information and data, and by requesting that comments be submitted to the State agency.

(c) A number of procedural options, if permitted by State law, are available to State agencies to satisfy the public notice requirements of this subpart. They include, but are not limited to:

(1) The State agency providing the public notice;

(2) The State agency requiring the applicant to provide the public notice; or

(3) The State agency relying upon the public notice provided by the Federal agency reviewing the application for the Federal license or permit (e.g., notice of availability of NEPA environmental impact statements) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices whenever possible to minimize duplication of effort and to avoid unnecessary delays.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.62 Public hearings.

(a) At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Public hearings shall be scheduled with a view towards (1) allowing access to the consistency certification and accompanying public information within a reasonable time prior to the hearing, (2) facilitating broad public attendance and participation at the hearing, and (3) affording the applicant expeditious consideration of the proposed activity.

(b) Federal and State agencies are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

§ 930.63 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review.

(b) State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the Federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the Federal permitting agency may deny approval of the Federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

§ 930.64 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Assistant Administrator of the objection.

(b) State agency objections must describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

(c) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the Federal license or permit to ensure that proposed conditions satisfy Federal as well as State management program requirements.

(d) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 903.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) A State agency objection shall include a statement informing the applicant of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.65 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the Federal license or permit except as provided in Subpart H of this part.

§ 930.66 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally licensed or permitted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having coastal zone effects substantially different than originally proposed and, as a result, is no longer consistent with the State's management program; or (2) previously determined not to be an activity affecting the coastal zone, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally proposed and, as a result, the activity affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are provided to assure that all Federal license and permit activities described in detail in OCS plans and which affect the coastal zone are conducted in a manner consistent with approved coastal zone management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "Federal license or permit activity described in detail" means any activity requiring a Federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional, or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail Federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail Federal license or permit activities.

(b) The requirements of this subpart do not apply to Federal license and permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal zone effects resulting from OCS activities, management program lists required pursuant to

§ 930.53 shall include a reference to OCS plans which describe in detail Federal license and permit activities affecting the coastal zone.

§ 930.75 State agency assistance to persons; information requirements.

(a) As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail Federal license or permit activities affecting the coastal zone should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document.

(b) In accordance with the provisions in § 930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§ 930.76 Submission of an OCS plan and consistency certification.

Any person submitting to the Secretary of the Interior or designee any OCS plan shall:

(a) Identify all activities described in detail in the plan which are subject to State agency review;

(b) When satisfied that the proposed activities meet the Federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification, attached to the OCS plan, and the Secretary of the Interior or designee shall furnish the State agency a copy of the OCS plan (excluding proprietary information) and consistency certification.

(c) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR 250.34) and regulations pertaining to the OCS information program (see 30 CFR Part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to § 930.75(b).

(2) A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program, and

(3) A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the person shall give appropriate weight to the various provisions within the management program in accordance with the guidance provided in § 930.58(a)(4).

(c) At the request of the person, interested parties who have access to information required by paragraphs (a) and (b)(1) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the person, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (b) (2) and (3) of this section.

(d) When satisfied that adequate protection against public disclosure exists, persons should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposed activities. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposed activities.

§ 930.78 Commencement of State agency review; public notice.

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.77 shall not extend the date of commencement of State agency review.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

§ 930.79 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the State agency's receipt of the certification and supporting information. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection to the consistency certification within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the Federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with the directives within § 930.64 (b) and (d). The objection shall also include a statement informing the person of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.80 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.81 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to Federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in Subpart H of this part.

§ 930.82 Multiple permit review.

(a) A person submitting a consistency certification for Federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related Federal license and permit activities affecting the coastal zone which are not required to be described in detail in OCS plans but which are subjected to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, etc.). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of Subpart D of this part.

(b) A State agency objection to one or more of the OCS-related Federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval (1) for those OCS-related license or permit activities found by the State agency to be consistent with the management program, and (2) for the license and permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.83 Amended or new OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and if, pursuant to Subpart H, the Secretary does not determine that each of the objected to Federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the person shall submit an amended or new plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the new consistency determination. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed Federal license or permit activities described in detail in the amended or new plan will be conducted in a manner consistent with the State's management program.

§ 930.84 Review of amended or new OCS plans; public notice.

(a) After receipt of a copy of the amended or new OCS plan, consistency certification, and accompanying data and information, State agency review shall begin.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

(c) The State agency shall concur with or object to the person's consistency certification in accordance with the directives within § 930.79, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

(d) If the State agency issues a concurrence or is conclusively presumed to concur with the person's new consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(e) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an amended or new OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.85 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended or new OCS plan, the prohibition in § 930.81 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to Subpart H may take place, and the development of an additional amended or new OCS plan and consistency certification may be required pursuant to §§ 930.83 through 930.84.

§ 930.86 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities described in detail OCS plans to make certain that such activities continue to conform to both Federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this Subpart, and such failure allegedly involves the conduct of activities affecting the coastal zone in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the U.S. Geological Survey supervisor for the area involved. Such claim shall include: (1) A description of the specific activity involved and the alleged lack of compliance with the OCS plan, and (2) a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Assistant Administrator.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or section 306(c)(5) State agency (see § 930.18) may file a written objection with the Secretary. If the Secretary finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Secretary, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Secretary and the U.S. Geological Survey, pending approval of the amended or new OCS plan. The directives within §§ 930.83 through 930.85 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Secretary finds that one or more of the activities described in detail in the OCS plan which affects the coastal zone are being conducted or are having a coastal zone effect substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the State's management program. The Secretary may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Secretary's consideration.

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are provided to assure that Federal assistance to State and local governments for activities affecting the coastal zone is granted only when such activities are consistent with approved coastal zone managements programs.

§ 930.91 Federal assistance.

The term "Federal assistance" means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29136, June 24, 1983]

§ 930.94 State intergovernmental review process for consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29137, June 24, 1983]

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of Federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior 306(c)(5) state agency (see § 930.18) consultation with affected Federal agencies and approval by the Assistant Administrator.

(b) In the event the State agency chooses to review applications for Federal assistance activities outside of the coastal zone but likely to affect the coastal zone, the State agency must develop a Federal assistance provision within the management program generally describing the geographic area (e.g. coastal floodplains) within which Federal assistance activities will be subject to review. This provision, and any refinements, will require prior 306(c)(5) State agency consultation with affected Federal agencies and approval by the Assistant Administrator.

(c) The State agency shall provide copies of any Federal assistance list or geographic provision, and any refinements, to Federal agencies, units of State or local government empowered to undertake Federally assisted activities within the coastal zone or described geographic area.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979. Redesignated and amended at 48 FR 29136, June 24, 1983]

§ 930.96 Consistency review.

(a) If pursuant to the intergovernmental review process, the State agency does not object to the proposed activity, the Federal agency may grant the Federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(b) If pursuant to the intergovernmental review process, the State agency objects to the proposed project, the state agency shall notify the applicant agency, Federal agency and the Assistant Administrator of the objection.

(c) State agency objections must describe: (1) How the proposed project is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

(d) A State agency objection may be based upon a determination that the applicant agency has failed, following a written State agency request, to supply necessary information. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) State agency objections shall include a statement informing the applicant agency of a right of appeal to the Secretary on the grounds described in Subpart H of this part.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in Subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

(a) State agencies should monitor proposed Federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA environmental impact statements, etc.) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which can reasonably be expected to affect the coastal zone and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Assistant Administrator. State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federally assisted activity, the Federal agency shall not provide assistance to the applicant agency except as provided in Subpart H, unless the Assistant Administrator disapproves the State agency's decision to review the activity. The Assistant Administrator shall be guided by the provisions in § 930.54 (c) and (d).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.99 Availability of mediation for Federal assistance disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a Federal assistance activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding Federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Assistant Administrator has disapproved a State agency decision to review an activity.

§ 930.100 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally assisted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally assisted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State management program, or (2) previously determined not to be a project affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result the project affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant agency.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 Informal negotiations.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCZM shall be available to assist the parties in these efforts.

§ 930.112 Request for mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the section 306(c)(5) State agency (see § 930.18), may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, and to the Assistant Administrator.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly repetitious oral presentation may be excluded at the discretion of the hearing officer; in the event of such exclusion the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate (a) at any time the Federal and State agencies agree to a resolution of the serious disagreement, (b) if one of the agencies withdraws from mediation, (c) in the event the agencies fail to reach a resolution of the serious disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or (d) for other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

§ 930.120 Objectives.

The provisions of this subpart provide procedures by which the Secretary may find that a Federal license or permit activity, including those described in detail in an OCS plan, or a Federal assistance activity, which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

The term "consistent with the objectives or purposes of the Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

§ 930.122 Necessary in the interest of national security.

The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant.

The term "appellant" refers to an applicant, person or applicant agency submitting an appeal to the Secretary pursuant to the provisions of this subpart.

§ 930.124 Informal discussions.

In the event the State agency informs the applicant, person or applicant agency that it intends to object to the proposed activity, the parties should consult informally to attempt to resolve the matter in a manner which avoids the necessity of appealing the issue to the Secretary. OCZM shall be available to assist the parties in these discussions.

§ 930.125 Appeals to the Secretary.

(a) An appellant may file a notice of appeal with the Secretary with 30 days of the appellant's receipt of a State agency objection. The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the Federal and State agencies involved.

(b) No extension of time will be permitted for the filing of a notice of appeal.

(c) The Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day period. Normally, the Secretary shall limit an extension period to 15 days.

§ 930.126 Federal and State agency responses to appeals.

(a) Upon receipt of the notice of appeal and supporting information, the Federal and State agencies shall have 30 days to submit detailed comments to the Secretary. Copies of such comments shall be sent to the appellant and other agency within the same time period.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.127 Public notice; receipt of comments.

(a) The Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice. At a minimum, public notice shall be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to copies of the appellant's notice of appeal and accompanying public information, and to the public information in the agencies' detailed comments.

(b) Interested persons may submit comments to the Secretary within 30 days from the date of public notice, with copies provided to the appellant and to the Federal and State agencies within the same time period.

(c) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.128 Dismissal of appeals.

The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(a) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(b) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(c) Secretarial receipt of a detailed comment from the Federal agency stating that the agency has disapproved the Federal license, permit or assistance application;

(d) Failure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the Act or (2) is necessary in the interest of national security.

§ 930.129 Public hearings.

The Secretary may order a hearing independently or in reponse to a request. If a hearing is ordered by the Secretary it shall be guided by the procedures described within § 930.113.

§ 930.130 Secretarial review.

(a) In reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(b) The Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice.

(c) Following consideration of the appeal, the Secretary shall issue a decision in writing to the appellant and to the Federal and State agencies indicating whether the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security; the decision shall include the basis for such finding. The Secretary shall provide public notice of the decision.

(d) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

§ 930.131 Federal agency responsibility.

(a) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(b) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.132 Review initiated by the Secretary.

(a) The Secretary may choose to consider whether a Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review may be initiated either before of after the completion of State agency review. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review and shall contain a request for submission of detailed comments to be submitted within 30 days from receipt of the notification. Copies of comments shall be exchanged among the parties.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.133 Public notice; receipt of comments; public hearings.

(a) Upon receipt of detailed comments from the parties, the Secretary shall provide public notice and request public comments in accordance with the provisions in § 930.127.

(b) The Secretary may order a hearing in accordance with the provisions in § 930.129.

§ 930.134 Secretarial review; Federal agency responsibility.

(a) Secretarial review shall be undertaken in accordance with the provisions in § 930.130.

(b) Federal agencies are responsible for adhering to the provisions in

§ 930.131 when deciding to approve or deny an application for an activity objected to by a State agency and independently reviewed by the Secretary.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

§ 930.140 Objectives.

The provisions of this subpart provide procedures to permit interested parties to notify the Assistant Administrator of Federal actions (a) believed to be inconsistent with an approved management program but which are not so found by the Federal or State reviewing agency, and (b) believed to have been incorrectly determined to be inconsistent with an approved management program. This subpart also provides for the reporting of any Federal actions found by the Assistant Administrator to be inconsistent with an approved management program and for the performance review of State implementation of the Federal consistency provisions of this part.

§ 930.141 Notification of Federal actions believed to be inconsistent with approved management programs.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to the alleged inconsistency of Federal activities including development projects, Federal license or permit activities, including those described in detail in OCS plans, and Federal assistance activities which are subject to the requirements of this part, and which have not been found by a Federal agency or State agency to be inconsistent with an approved management program. Copies of such comments should be sent to relevant Federal and State agencies, and to the applicant, person or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive and factual, and must describe how the Federal action is or would be inconsistent with an approved management program.

(c) Commentators are encouraged to recommend modifications or alternatives to the existing or proposed action which would enable it to be consistent with the management program.

(d) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to Federal license and permit activities, including those described in detail in OCS plans, and Federal assistance activities which are believed to have been incorrectly determined by a State agency to be inconsistent with an approved management program. Copies of such comments should be sent to the relevant Federal and State agencies, and to the applicant, person, or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive, and factual, and must clearly describe the basis for the belief that the State agency has incorrectly objected to the Federal action on the grounds of its inconsistency with the management program.

(c) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.143 Assistant Administrator reporting.

After considering the views of interested parties, the relevant Federal agency, State agency, and the applicant, person, or applicant agency, as appropriate, the Assistant Administrator shall determine whether the Federal action will be included in the annual report listing of inconsistent Federal actions.

§ 930.144 Assistant Administrator advisory statements.

Upon request, the Assistant Administrator may issue as advisory statement prior to the issuance of the annual report indicating whether a Federal action will be listed within the annual report as being inconsistent with an approved management program.

§ 930.145 Review of the implementation of Federal consistency provisions.

As part of the responsibility to conduct a continuing review of approved management programs, the Assistant Administrator shall review the performance of each State's implementation of the Federal consistency provisions in this part. The Assistant Administrator shall use information received pursuant to this subpart to evaluate instances where a State agency is believed to have either failed to object to inconsistent Federal actions, or improperly objected to consistent Federal actions. This evaluation shall be incorporated within the Assistant Administrator's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

PART 931—COASTAL ENERGY IMPACT PROGRAM

Subpart A—General

Sec.

931.1 Coastal Energy Impact Program—general description.
931.2 Objectives of the CEIP.

Subpart B—General Definitions

931.9 Index to definitions.
931.10 Act.
931.11 Coastal zone.
931.12 Fund.
931.13 Coastal energy activity.
931.14 Significantly affected.
931.15 New or expanded coastal energy activity.
931.16 Outer Continental Shelf.
931.17 Outer Continental Shelf energy activity.
931.18 Energy facility.
931.19 New or expanded energy facility.
931.20 Unit of general purpose local government.
931.21 Unit of local government.
931.22 NOAA and OCZM.
931.23 Assistant Administrator.
931.24 NEPA and EIS.

Sec.

Subpart C—Basic Eligibility

931.25 Eligible coastal State.
931.26 Satisfactory progress.
931.27 Eligibility determination.

Subpart D—Coastal Energy Impact Grants

931.30 General.
931.31 Objectives.
931.32 Definitions.
931.33 Eligibility for financial assistance under this subpart.
931.34 Allowable uses.
931.35 Section 308(c) allotment.
931.36 Application for financial assistance.
931.37 Limitations on expenditures.

Subpart E—Financing Public Facilities and Public Services

931.40 General.
931.41 Objectives.
931.42 Definitions.
931.43 Eligibility.
931.44 Allowable uses.
931.45 Credit assistance inventory.
931.46 Allotment formula.
931.47 Allotment of credit assistance.
931.48 Recall and reversion of allotted credit assistance.
931.49 Application for recalled or reverted credit assistance.
931.50 Application for financial assistance to provide public facilities and services.
931.51 Special requirements for section 308(d)(1) loans.
931.52 Special requirements for section 308(d)(2) Federal guarantees.

Subpart F—Repayment Assistance

931.60 General.
931.61 Objectives.
931.62 Definitions.
931.63 Purposes.
931.64 Sources of repayment assistance.
931.65 General eligibility.
931.66 Reports.
931.67 Review for repayment assistance.
931.68 Award of repayment assistance.
931.69 Appeal procedure.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

931.70 General.
931.71 Objectives.
931.72 Definitions.
931.73 Eligibility.
931.74 Allowable uses.
931.75 Allotment of section 308(d)(4) environmental and recreational grants.
931.76 Reversion of allotted funds.

Sec.
931.77 Application for environmental and recreational grants.
931.78 Limitations.

Subpart H—Lateral Seaward Boundaries

931.80 General.
931.81 Establishment of delimitation lines when agreements exist between States.
931.82 Establishment of delimitation lines when no agreements exist between States.
931.83 Establishment of delimitation lines under later compacts or agreements.
931.84 Procedures for defining delimitation lines by equidistance principles.
931.85 Formula grants impounded for disputed areas.

Subpart I—General Provisions

931.90 Allowable costs.
931.91 Administrative procedures.
931.92 [Reserved]
931.93 Other Federal requirements.
931.94 Environmental review.
931.95 Records.
931.96 Audit.
931.97 Recovery of funds.
931.98 Other sources of Federal funding.
931.99 Coordination with State coastal zone management agency.

Subpart J—Intrastate Allocation of Financial Assistance

931.110 General.
931.111 Objective.
931.112 Intrastate allocation.
931.113 Forms of assistance.
931.114 Appeal to Assistant Administrator.

Subpart K—Allotment of Section 308(b) Formula Grants

931.120 General.
931.121 Definitions.
931.122 OCS regions.
931.123 Impacted State.
931.124 Eligibility.
931.125 Allotment of section 308(b) formula grants.
931.126 Recall of formula grants.

AUTHORITY: Sec. 308, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, 16 U.S.C. 1451 et seq.), as amended by Pub. L. 95-327, unless otherwise noted.

SOURCE: 44 FR 29584, May 21, 1979, unless otherwise noted.

Subpart A—General

§ 931.1 Coastal Energy Impact Program—general description.

The Coastal Energy Impact Program (CEIP) was established under section 308 of the Act to provide coastal states and local governments in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. Such assistance includes:

(a) Grants to coastal states under subsection (b)(5)(B) for the study of, planning for, development of, and the carrying out of projects and programs to provide new or improved public facilities or public services required as a result of outer continental shelf energy activity;

(b) Grants under subsections (b)(5)(C) and (d)(4) for preventing, reducing, or ameliorating unavoidable losses of valuable coastal environmental or recreational resources when such losses result from coastal energy activity;

(c) Grants under subsection (c)(1) for the study of, and planning for significant economic, social, or environmental consequences in the coastal zone when such consequences result from the siting, construction or operation of new or expanded energy facilities;

(d) Credit assistance under subsections (d)(1) and (d)(2) and appropriate forms of repayment assistance under subsections (d)(3) and (b)(5)(A) to provide new or improved public facilities or public service required as a result of coastal energy activity;

(e) Grants under subsection (c)(2) to assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the Outer Continental Shelf Lands Act.

§ 931.2 Objectives of the CEIP.

(a) The principal objectives of the CEIP are:

(1) To improve and strengthen coastal zone management in the United States by providing financial assistance only for programs and projects that are in accord with the policy of the Coastal Zone Management Act

and the coastal zone management objectives of the individual States.

(2) To preserve and enhance the Nation's valuable coastal recreational and environmental resources by

(i) Encouraging the timely and thorough planning for and the management of adverse consequences in the coastal zone caused by energy facility siting and energy resource development; and

(ii) Encouraging coastal States and local governments to exercise effectively their responsibilities to minimize losses to valuable coastal environmental or recreational resources that could result from coastal energy activity.

(3) To advance the National objective of obtaining a greater degree of energy self sufficiency by encoraging the rational and timely development of domestic coastal energy resources and energy resource transportation systems.

(4) To protect and improve the quality of the human environment in the coastal zone by providing financial assistance to coastal States and units of local government for new and improved public facilities required as a result of coastal energy activity.

(5) To provide financial assistance that is simple to administer and that permits the coastal States and units of local government a high degree of control and discretion.

(6) To assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the OCS Lands Act.

(b) The CEIP will be administered in a manner that will strike a balance between the major National goals of obtaining a greater degree of energy self sufficiency and protecting the coastal environment:

(1) Only coastal energy activity necessary for the rational, timely and orderly development of the Nation's coastal energy resources will be encouraged; and

(2) Unnecessary development in the coastal zone will be discouraged by providing financial assistance only for those public facilities and public services that are actually needed because of coastal energy activity.

Subpart B—Definitions

§ 931.9 Index to definitions.

The following listing includes important terms defined in Part 931 keyed to the section where they are defined.

Term	Section
Act	931.10(a)
Assistant Administrator	931.23
Borrower	931.62
Coastal energy activity	931.13
Coastal zone	931.11
Development	931.17(d)
EIS	931.24(b)
Eligible coastal State	931.25
Energy facility	931.18
Exploration	931.17(c)
First landed	931.121(a)
Fund	931.12
In close proximity to	931.13(d)
Joint funding	931.98(c)
Loss	931.72(c)
NEPA	931.24(a)
New or expanded coastal energy activity	931.15
New or expanded energy facility	931.19
New or improved public facility	931.42(d)
New or improved service	931.42(e)
NOAA	931.22
OCZM	931.22
Outer Continental Shelf	931.16
Outer Continental Shelf energy activity	931.17
Person	931.72(e)
Production	931.17(e)
Public facility	931.42(a)
Public service	931.42(c)
Section	931.10(b)
Significantly affected	931.14
Unavoidable	931.72(d)
Unit of general purpose local government	931.20
Unit of local government	931.21
Valuable environmental resource	931.72(a)
Valuable recreational resource	931.72(b)

§ 931.10 Act.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended, (16 U.S.C. 1451 et seq.).

(b) The term "section" or "subsection" means a section or subsection of the Coastal Zone Management Act of 1972, as amended, unless it is clear from the context that some other meaning is intended.

§ 931.11 Coastal zone.

The "coastal zone" is that area of land and water whose boundaries are determined by a State under § 920.11 of this chapter for purposes of the development of a coastal zone management program under section 305, or under § 923.11 of this chapter for purposes of administering a coastal zone management program under section 306, or as part of a management program which is consistent with the policies set forth in section 303. Such boundaries must be approved by the Assistant Administrator.

§ 931.12 Fund.

The term "Fund" means the Coastal Energy Impact Fund established under section 308(h).

§ 931.13 Coastal energy activity.

(a) The term "coastal energy activity" is limited to the following activities:

(1) Any Outer Continental Shelf energy activity;

(2) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas; or

(3) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Ports Act of 1974 (33 U.S.C. 1502(10)).

(b) An activity is a "coastal energy activity" only to the extent that:

(1) The conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion or operation of any equipment or facility; and

(2) The Assistant Administrator determines that a technical requirement exists which necessitates that such siting, construction, expansion, or operation be carried out in, or in close proximity to, the coastal zone of any coastal State.

(c) Such technical requirements are limited to:

(1) Dependency on coastal waters;

(2) Safety;

(3) Proximity to oil, natural gas, or coal fields;

(4) Location of markets;

(5) Federal siting regulations or decisions; and

(6) Type and amount of required land.

(d) The siting, construction, expansion, or operation of any equipment or facility shall be considered to be "in close proximity to" the coastal zone of any coastal State if such coastal zone has been or is likely to be significantly affected by such siting, construction, expansion, or operation.

§ 931.14 Significantly affected.

The coastal zone of a coastal State is "significantly affected" by the siting, construction, expansion, or operation of an energy facility if such siting, construction, expansion, or operation:

(a) Causes or is likely to cause population changes in the coastal zone;

(b) Changes or is likely to change employment patterns in the coastal zone, including those in fishing and tourism;

(c) Damages or threatens to damage or degrade any valuable environmental or recreational resources in the coastal zone, including ambient air, water or noise quality, or any other Federal, State, or local environmental standard.

(d) Increases or threatens to increase risks to public health, safety, or real property in the coastal zone.

§ 931.15 New or expanded coastal energy activity.

(a) The term "new or expanded coastal energy activity" means any coastal energy activity of the siting, construction, expansion, initial operation, or replacement, in whole or in part, of any equipment or facility required by the conduct, support, or facilitation of such activity takes place after July 26, 1976.

(b) The term "expansion" includes both the physical expansion of a facility and the expansion of the output of the facility.

(c) The term "initial operation" is intended to include the case in which a previously operating but then idle energy facility is reactivated after July 26, 1976.

§ 931.16 Outer Continental Shelf.

The term "Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

§ 931.17 Outer Continental Shelf energy activity.

(a) The term "Outer Continental Shelf energy activity" means:

(1) Any exploration for, or any development or production of, oil or natural gas from the Outer Continental Shelf; or

(2) The siting, construction, expansion or operation of any new or expanded energy facilities that are directly required by such exploration, development or production.

(b) The term "directly" required by Outer Continental Shelf energy activity refers to a new or expanded energy facility that has a technical requirement that necessitates its location in or in close proximity to the coastal zone and is:

(1) Any equipment or facility used primarily in the exploration for or the development, production or transportation of any oil or natural gas from the Outer Continental Shelf; or

(2) Any facility or equipment used primarily for the manufacture, production or assembly of equipment, machinery, or devices that are necessary to and ordinarily used in the exploration for, or development or production or transportation of oil or natural gas from the Outer Continental Shelf.

Such equipment and facilities include but are not limited to:

(i) Gas processing and treatment plants;

(ii) Platform fabrication yards;

(iii) Pipe coating yards;

(iv) Service bases;

(v) Marine pipelines;

(vi) Drilling rigs and drill ships;

(vii) Production platforms;

(viii) Offshore terminals;

(ix) Marine repair and maintenance facilities;

(x) Oil storage terminals.

(c) The term "exploration" means the process of searching for oil or natural gas, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are uses to detect or imply the presence of oil or natural gas, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to determine whether to proceed with development and production.

(d) The term "development" means those activities which take place following discovery of oil or natural gas in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the oil and gas discovered.

(e) The term "production means those activities which take place after the successful completion of any means for the removal of oil or natural gas, including such removal, field operations transfer of oil or natural gas to shore, operation monitoring, maintenance, and work-over drilling.

§ 931.18 Energy facility.

(a) The term "energy facility" means any equipment or facility which is or will be used primarily:

(1) In the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(2) For the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in the activities described in paragraph (a)(1) of this section.

(b) The term includes:

(1) Electric generating plants, including those utilizing fossil or biomass fuels, nuclear power, solar energy, ocean thermal energy conversion, tidal, wave or, wind power, or geothermal energy, and associated transmission systems;

(2) Petroleum refineries and associated facilities;

(3) Gasification plants;

(4) Facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas;

(5) Uranium enrichment or nuclear fuel processing facilities;

(6) Coal storage, transportation or transfer facilities;

(7) Drilling rigs, platforms, subsea completions, and subsea production systems;

(8) Construction yards for platforms and exploration rigs, pipe coating

yards, bases supporting platforms and pipeline installation, and crew and supply bases;

(9) Oil and gas storage facilities;

(10) Marine pipeline systems;

(11) Oil and gas processing facilities;

(12) Facilities, including deepwater ports, for the transfer of petroleum;

(13) Facilities for geopressurized gas; and

(14) Terminals which are associated with any of the foregoing.

§ 931.19 New or expanded energy facility.

The term "new or expanded energy facility" refers to an energy facility whose siting, construction, expansion, initial operation, or replacement, in whole or in part, takes place after July 26, 1976.

§ 931.20 Unit of general purpose local government.

(a) The term "unit of general purpose local government" means:

(1) Any political subdivision of any coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(2) Any political subdivision of any coastal State that is located within a political subdivision of such coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(3) Any special entity created by such coastal State or political subdivision that (in whole or in part) is located in or has authority over any portion of such State's coastal zone.

(b) The term "unit of general purpose local government" is limited to those entities described in paragraph (a) of this section that provide any public facility or public service financed in whole or in part by taxes or user fees.

§ 931.21 Unit of local government.

The term "unit of local government" means any unit of general purpose local government, as defined in § 931.20 or any agency recognized or designated as an areawide or regional comprehensive planning and development agency pursuant to Office of Management and Budget Circular A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, or under Title IV of the Intergovernmental Cooperation Act of 1968.

§ 931.22 NOAA and OCZM.

(a) The acronym "NOAA" means the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(b) The acronym "OCZM" means the Office of Coastal Zone Management of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 931.23 Assistant Administrator.

The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 931.24 NEPA and EIS.

(a) The acronym "NEPA" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) The acronym "EIS" means an Environmental Impact Statement prepared pursuant to NEPA.

Subpart C—Basic Eligibility

§ 931.25 Eligible coastal State.

(a) No coastal State is eligible to receive an allotment or any financial assistance under this part unless such State:

(1) Has a management program that is approved under section 306; or

(2) Is receiving a grant under sections 305(c) or (d); or

(3) Is making, in the judgment of the Assistant Administrator, satisfactory progress toward the development of a management program that is consistent with the policies set forth in section 303; and

(4) The governor of such State has designated a State agency or agencies:

(i) To apply for financial assistance under section 308;

(ii) To assure, to the maximum extent practicable, that financial assistance provided under section 308 is apportioned, allocated, and granted to units of local government within such State on a basis which is proportional to the extent to which such units need such assistance; and

(iii) To receive and administer section 305 grants or section 306 grants pursuant to § 923.91 of this chapter, or to administer a State coastal management program which is consistent with the policies set forth in section 303.

(b) While preferable in terms of coordination, it is not required that a single agency perform all three functions stated in paragraph (a)(4) of this section and it is permissible to designate a separate agency to apply for and receive financial assistance under section 308(c)(2). However, in the event different agencies are designated under paragraphs (a)(4)(i), (ii), and (iii) of this section, one agency must be designated to assure coordination with the others.

§ 931.26 Satisfactory progress.

(a) The Assistant Administrator shall judge that a State is making satisfactory progress toward the development of a management program consistent with the policies set forth in section 303 if one of the following conditions is met:

(1) A coastal State has exhausted its eligibility for program development funding under section 305 without achieving program implementation approval under section 306, but is still pursuing development and implementation of a management program consistent with the policies set forth in section 303; or

(2) A coastal State's eligibility for program funding under section 305 or section 306 has been suspended or terminated but the State is making adequate efforts to reacquire eligibility under section 305 or 306 while still pursuing development of a management program consistent with the policies set forth in section 303; or

(3) A coastal State is otherwise pursuing a comprehensive management program which is consistent with the policies set forth in section 303 and for good cause shown is not developing or implementing such program under section 305 or 306.

(b) The phrase "consistent with the policies set forth in section 303" refers to a management program which incorporates:

(1) Policies which provide for the preservation, protection, development, and, where possible, the restoration or enhancement of the resources of the State's coastal zone;

(2) Provisions which insure wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values, as well as to needs for economic development. Such provisions shall include, but are not limited to:

(i) Identification of a coastal zone which is capable for being delineated and which is subject to management under the program;

(ii) Identification of permissible land and water uses for the area within the coastal zone;

(iii) Procedures for assuring that land and water uses of regional and national benefit are not arbitrarily restricted or excluded in policies or management mechanisims developed pursuant to the State's program;

(iv) State and local legal authorities and organizational structures sufficient to effectuate management over identified land and water uses within the coastal zone; and

(v) Coastal zone water pollution and air pollution control consistent with the requirements of the Clean Water Act, as amended, and the Clean Air Act, as amended.

(3) An adequate opportunity for Federal agencies having interests affecting the State's coastal zone to participate in the development of the State's management program and have their views adequately considered; and

(4) An adequate opportunity for local governments, State and regional agencies, commercial and industrial groups, and the general public to participate in the development of the State's management program and have their views adequately considered.

§ 931.27 Eligibility determination.

Before allotting or awarding any financial assistance to any coastal State under this part the Assistant Administrator will determine whether the State is eligible as described in this

Subpart C. No allotments will be made and no funds will be awarded if the State is not eligible, and all funds previously allotted will be held in the State's account until the end of the fiscal year in which the State is determined to be not eligible. If the State has not regained eligibility under this subpart by the end of that fiscal year those funds will be reallotted among other eligible coastal States as soon as practicable.

Subpart D—Coastal Energy Impact Grants

AUTHORITY: Secs. 308 and 317, Coastal Zone Management Act of 1972, as amended.

SOURCE: 47 FR 21024, May 17, 1982, unless otherwise noted.

§ 931.30 General.

This subpart sets forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses. It also describes procedures for allotting section 308(c) moneys among eligible coastal states and for applying for assistance under section 308(c).

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal states and units of local government plan for economic, social, or environmental consequences of new or expanded energy facilities and to prevent, reduce, or mitigate losses resulting from the transportation, transfer, or storage of coal or from alternative ocean energy activity.

(b) To help coastal states develop the capability to participate effectively in Federal policy, planning, and managerial decisions relating to the development of OCS oil and gas resources.

(c) To provide financial assistance that is simple to administer and that permits the coastal states and units of local government a high degree of control and discretion.

(d) To improve and strengthen coastal zone management in the United States.

§ 931.32 Definitions.

(a) *Coal.* The term "coal" includes all forms of anthracite and bituminous coal, peat, coke, and lignite. In addition to these substances, the term includes ash and sludge, which are waste products of burning coal.

(b) *Coal facility.* The term "coal facility" includes the following:

(1) Any facility used in the transportation, transfer, or storage of coal. Such facilities include, but are not limited to:

(i) Coal loading docks;

(ii) Coal barging terminals;

(iii) Coal ports;

(iv) Coal storage yards;

(v) Rail transport facilities.

(2) Any facility that converts coal into another form of energy useable by consumers or industry including but not limited to:

(i) Power plants;

(ii) Synthetic fuel plants;

(iii) Liquefaction plants.

(3) Any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, including mines and steel mills.

(c) *Alternative Ocean Energy (AOE) facility.* The term "alternative ocean energy facility" means:

(1) Any facility located in or seaward of, the coastal zone whose primary purpose is to utilize the mechanical, chemical, physical, biological or thermal properties of ocean or lake waters in the conversion of those properties into a form of energy usable by consumers or industry. Facilities whose only reliance on ocean or lake waters is for cooling (such as nuclear power plants), liquefied natural gas facilities, and facilities for the exploration for and development of offshore oil and natural gas do not constitute AOE facilities. Solar facilities will also be considered AOE facilities. AOE facilities include, but are not limited to:

(i) Ocean Thermal Energy Conversion (OTEC).

(ii) Tidal and wave generation of electricity.

(iii) Ocean current generation of electricity.

(iv) Salinity gradient generation of electricity.

(v) Pumped storage generation of electricity.

(vi) Solar generation of electricity.

(vii) Biomass production—e.g., kelp farms.

(viii) Wind generation of electricity that depends on the sea or lake breeze.

(d) *Likely to be affected by OCS energy activity.* The Assistant Administrator will find a coastal state "likely to be affected by OCS energy activity" if the Assistant Administrator determines that:

(1) The state can reasonably expect to be exposed to significant social, economic, or environmental consequences as a result of any OCS lease sale that has taken place or is scheduled to take place under the Department of the Interior's (DOI) Five Year Planning Schedule; or

(2) The state has administrative, policy, operational, or managerial responsibilities under the OCS Lands Act that should properly be supported with section 308(c) funds.

§ 931.33 Eligibility for financial assistance under this subpart.

(a) A coastal state is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C of this part.

(b) A unit of local government may apply for assistance under this subpart through the state agency designated under Subpart C of this part to apply for CEIP assistance.

§ 931.34 Allowable uses.

(a) Funds granted to a state under section 308(c) must be used in accordance with the provisions of this section.

(1) *Planning.* States may use section 308(c) funds to plan for any economic, social, or environmental consequence that has occurred, is occurring, or is likely to occur in the coastal zone as a result of siting, constructing, expanding or operating new or expanded energy facilities that significantly affect the coastal zone, and for reasonable costs of administering the state coastal energy impact program.

(2) *OCS State participation.* States likely to be affected by OCS energy activity may use section 308(c) funds to carry out their responsibilities under the OCS Lands Act. These responsibilities include participating in the administrative, policy, operational, and managerial decisions relating to management of the oil and natural gas resources of the Outer Continental Shelf.

(3) *Coal and AOE impact mitigation.* States may use section 308(c) funds to design and implement projects (including construction and land acquisition) to prevent, reduce, or mitigate unavoidable losses to valuable coastal environmental and recreational resources resulting from the transportation, transfer, or storage of coal or from AOE activities.

§ 931.35 Section 308(c) allotment.

(a) The Assistant Administrator will develop a formula for allotting available section 308(c) funds among eligible coastal states. This formula will be designed to estimate the relative need for planning, OCS participation, and coal and AOE impact mitigation among eligible states.

(b) This formula will be based on the number of existing and proposed new or expanded energy facilities, the number of existing and proposed coal facilities that significantly affect the coastal zone, the number of existing and proposed AOE facilities located in or seaward of the coastal zone, the nature of their impacts and other relevant factors deemed appropriate by the Assistant Administrator such as coal tonnage, OCS leasing, production of OCS oil and natural gas, shoreline mileage, and coastal county population.

(c) Each fiscal year, before computing an allotment, the Assistant Administrator will submit this formula to all eligible coastal states for review and comment. If appropriate, the formula will be revised before any final allotments are calculated.

(d) The Assistant Administrator may establish minimum and maximum allotments.

§ 931.36 Application for financial assistance.

(a) Applications for financial assistance under this subpart may be submitted as soon as states are notified of their allotments under section 308(c).

(b) Applications for assistance under this subpart must contain the following certification and information:

(1) A clear and brief description of the projects and activities that will be funded under section 308(c) as they relate to allowable uses under § 931.34. For construction projects, as defined in the Office of Management and Budget Circular A-102, or planning projects that are the first stages of site specific development projects, the following additional information is required:

(i) Environmental impact assessment data in detail sufficient to allow the Assistant Administrator to determine whether an EIS will be required under NEPA;

(ii) Copies of all necessary major Federal permit or license approvals;

(iii) A Preliminary Engineering Report.

(2) A certification by the state agency designated under § 931.25(a)(4)(i) that the assistance for the purposes specified in § 931.34(a)(1) and (3) has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part.

(3) A certification by the state agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the state's developing, or consistent with the state's approved, coastal zone management program.

(c) Allotted funds not applied for by the end of the fiscal year for which allotments were made may be reallotted by the Assistant Administrator among other eligible states.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[47 FR 21024, May 17, 1982, as amended at 48 FR 29137, June 24, 1983]

§ 931.37 Limitations on expenditures.

(a) Section 308(c) funds expended by a state for the purposes described in § 931.34 may not exceed 70 percent of the actual cost of carrying out projects;

(b) States and local governments may use in-kind contributions as the non-federal matching share in accordance with OMB Circular A-102;

(c) Section 308(c) funds may not be used:

(1) For the prevention, reduction, or mitigation of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, or rental of such resource by a state agency or unit of local government when the sale, lease, or rental occurs after October 17, 1980;

(2) To pay for that part of a project designed to prevent, reduce, or mitigate the loss of a valuable environmental or recreational resource which is incommensurate with the value of the loss or which can be paid for with funds readily available from any other Federal program;

(3) To pay for that part of a loss:

(i) That occurs after July 26, 1976, and

(ii) That could have been prevented by a reasonable exercise of a state's existing regulatory authority.

(4) For architectural, engineering, and other technical service fees or costs unless:

(i) Compensation is comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation is not based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards conform to professionally recognized national standards.

(5) The purchase of movable construction related equipment such as dump trucks and excavating equipment unless expressly authorized by the financial assistance award.

(d) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

Subpart E—Financing Public Facilities and Public Services

§ 931.40 General.

(a) This subpart states the objectives for providing assistance to coastal States and units of general purpose local government to finance new or improved facilities and public services under section 308(d) (1) and (2) and section 308(b)(5) (B) and (C). This subpart also describes the procedures for allotting section 308(d) credit assistance among eligible coastal States and the procedures for applying for credit assistance and section 308(b) formula grants to construct new or improved public facilities or to provide new or improved public services.

(b) The procedures for allotting section 308(b) formula grants are described in Subpart K.

§ 931.41 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal States and units of general purpose local government provide new or improved public facilities and public services needed because of coastal energy activity or OCS energy activity;

(b) To provide front-end financing that can be expected to be repaid later from revenues generated by the coastal energy activity;

(c) To assure that necessary development in coastal areas is consistent with State coastal zone management objectives, the safeguarding of valuable national coastal environmental and recreational resources, and public safety; and

(d) To discourage unnecessary development in the coastal zone by providing assistance only for those public facilities and public services actually needed because of coastal energy activity or OCS energy activity.

§ 931.42 Definitions.

(a) The term "public facility" includes, but is not limited to, the facilities listed in paragraph (b) of this section to the extent they are owned, operated, or financed by the State or unit of general purpose local government. The term "public facility" does not include facilities to the extent they primarily serve industrial facilities unless:

(1) Industrial user charges will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart; or

(2) The Assistant Administrator finds that the facility is necessary to prevent significant adverse impacts in the coastal zone.

(b) *Public facility*—(1) *Education.* Day care centers; primary, secondary, and general vocational schools, including portable classrooms and temporary facilities; school equipment; libraries, including books and equipment;

(2) *Environmental protection.* Facilities and equipment used to: improve, monitor, or prevent degradation of air, water, noise or solid waste standards; prevent or mitigate damage to environmental or recreational resources; assure the continued viability of fish, shellfish, and wildlife habitat; prevent or control erosion. Land aquisition for environmental protection;

(3) *Government administration.* Facilities and equipment essential for general government administration;

(4) *Health care.* Emergency medical facilities and equipment, including ambulances; clinic and hospital buildings and equipment; alcohol and drug abuse centers; emergency shelter and sanitary facilities; and epidemiological screening or other assistance to assure community health.

(5) *Public safety and law enforcement.* Detention centers, police equipment and stations, fire stations and firefighting equipment, fire training centers, animal control facilities, communication facilities and equipment, and rescue facilities and equipment;

(6) *Recreation.* Facilities and equipment for amateur sports and performing arts, community recreational centers, local parks and playgrounds acquisition of parkland or beaches or of public access to such land or beaches;

(7) *Transportation.* Street and street lighting, roads, bridges, road maintenance equipment, parking associated with public facilities, docks, air and water navigation aids, canals and navigation facilities, air terminals in remote areas, mass transit including bus and ferry systems;

(8) *Public utilities.* Electric generating plants and distribution systems; natural gas distribution systems; solid waste collection systems; waste collection and treatment systems, including drainage; water supply systems; and telephone systems.

(9) *Housing.* Single and multi-family housing owned and operated by a public entity and all necessary public infrastructure to support public housing developments.

(c) The term "public service" means any service authorized by law to be provided by a State or unit of general purpose local government to the extent that it is provided or financed by a State or unit of general purpose local government. The term "public service" does not include a service to the extent it primarily serves industrial users unless:

(1) Industrial user charges will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart; or

(2) The Assistant Administrator finds that this service is necessary to prevent or mitigate significant adverse impacts in the coastal zone.

(d) A public facility is considered "new or improved" if it is constructed, expanded, renovated, initially operated, or if its efficiency is improved after July 26, 1976.

(e) A public service is considered "new or improved" if:

(1) The proposed type or increased level of service was not offered in the fiscal year before the application for assistance for such service, or

(2) If it improves the efficiency of existing public services.

§ 931.43 Eligibility.

(a) To be eligible for financial assistance under this subpart, a coastal State must meet the basic eligibility requirements of Subpart C.

(b) A unit of general purpose local government may apply for assistance under this subpart through its State.

§ 931.44 Allowable uses.

(a) Credit assistance available from the Fund under sections 308(d) (1) and (2) is to be used to finance new or improved public facilities and public services that are required as a result of coastal energy activity.

(b) Grant assistance under section 308(b) is to be used for the development of, and the carrying out of projects and programs necessary to provide new or improved public facilities and public services that are required as a result of OCS energy activity.

(c) The following are allowable project costs under this subpart to the extent they are reasonable and necessary to provide new or improved public facilities or public services:

(1) Land acquisition including fee simple, leases, easements, and rights-of-way.

(2) Architectural, engineering, and other technical service fees or costs except that:

(i) Compensation must be comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation must not be based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards must conform to professionally recognized national standards.

(3) Construction expenses, including, but not limited to, construction materials, fixtures, appurtenances, and fixed machinery and equipment. The purchase of movable construction related equipment such as dump trucks and excavating equipment will be allowable only if expressly authorized in the grant or loan agreement;

(4) Site preparation and improvement;

(5) The acquisition of movable equipment essential for the maintenance of new or improved public facilities or services; and

(6) Public services to the extent that the applicant can illustrate that State or local funds will be available to meet the cost of the service in the future; or that the service is of the type that a one-time expenditure of funds will meet a stated goal without the dependency of future funding for successful completion.

(7) The assessment and mitigation of environmental, social, and economic impacts of the proposed project.

(8) The following, but only if the project or program is funded under sections 308(d) (1) or (2):

(i) Capitalized interest during construction for a project in which it is necessary or advantageous for the recipient to borrow funds to finance construction costs and where State law permits such a loan.

(ii) Capitalized interest during development limited to that which is required to meet interest payments after the project is operating but before income is sufficient to provide such payment. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such interest payments.

(iii) Initial public service expenses (operating costs) including supply inventories, salaries and utilities limited to those required to meet public service expenses after the project is operating but before income is sufficient to provide for such services. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such public service expense.

(d) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

§ 931.45 Credit assistance inventory.

(a) At the end of each fiscal year the Assistant Administrator will compile for each eligible coastal State an inventory of new or expanded coastal energy activities.

(b) The purpose of this inventory is:

(1) To identify those new or expanded coastal energy activities that have caused, are causing, or are likely to cause a need for new or improved public facilities and public services; and

(2) To provide a basis for estimating the relative need for credit assistance among eligible coastal States.

(c) To assure that the credit assistance inventory reasonably reflects actual need for new or improved public facilities and public services, a new or expanded coastal energy activity will be placed on the inventory only if the Assistant Administrator determines that such activity is likely to necessitate new or improved public facilities or public services, and

(1) A major state or federal permit has been approved to conduct such activity; or

(2) Such activity is described in exploration plans or production and development plans approved by the Department of the Interior; or

(3) The Assistant Administrator, based on reasonable evidence submitted by the State, determines that such activity is likely to be carried out in the near future.

(d) To assure an equitable distribution of credit assistance among coastal States, a coastal energy activity will not be placed on the inventory for a fiscal year if such activity:

(1) Was on the inventory in any preceding fiscal year in which credit assistance was allotted to the State on account of this activity; and

(2) The Assistant Administrator determines that adequate credit assistance was allotted to a coastal State as a result of such activity. The State may submit evidence to the Assistant Administrator showing the inadequacy of any credit assistance allotment.

[44 FR 29584, May 21, 1979; 45 FR 78118, Nov. 25, 1980]

§ 931.46 Allotment formula.

(a) The Assistant Administrator will develop a formula for allotting funds appropriated under sections 308(d) (1) and (2). This formula will be designed to estimate the need for new or improved public facilities and services and will be based on, and limited to, the following factors:

(1) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity and will reside in the coastal State;

(2) The new population in the Coastal State associated with such energy activity; and

(3) The standardized unit costs for new or improved public facilities and public services required as a result of such expected employment and related new population.

(b) The Assistant Administrator may periodically review and, if appropriate, revise this formula on the basis of the best available data concerning the need for public facilities and services created by coastal energy activity. However before making any revisions in the formula the Assistant Administrator will submit any proposed changes to all eligible coastal States for comment.

§ 931.47 Allotment of credit assistance.

(a) *State review.* (1) It is the intent of the Assistant Administrator to provide to each eligible coastal State thirty (30) days before the beginning of each fiscal year for which funds under section 308(d)(1) have been appropriated the following information:

(i) The inventory of coastal energy activity described in § 931.45 on which the allotment of appropriated funds will be based;

(ii) Data on new employment and related new population for each activity on the credit assistance inventory;

(iii) The allotment formula described in § 931.46; and

(iv) A description of the procedures for computing the allotment.

(2) Eligible coastal States will have 30 days to submit comments on this information to the Assistant Administrator who will revise the inventory, employment and population data, formula, and allotment computations as appropriate.

(3) Final allotments will be calculated no more than 30 days after the end of the 30-day State review period.

(b) *Allotment computation.* After the State review described in paragraph (a) of this section a public facility and public serviced need equivalency will be calculated for each activity shown on the credit assistance inventory by applying the allotment formula to each such activity. A State's need factor will be the sum of the need factors for all activities on that State's credit inventory. A State's allotment of credit assistance will equal the product of:

(1) The amount appropriated under section 308(d) (1) and (2); and

(2) The ratio of that State's public facility and public service need equivalency to the sum of the public facility and public service need equivalencies of all States.

§ 931.48 Recall and reversion of allotted credit assistance.

(a) This section applies only to credit assistance allotted under § 931.47.

(b) Allotted credit assistance may be recalled by the Assistant Administrator 30 days after notification of the State agency designated in § 931.25(a)(4).

(1) No credit assistance will be recalled before July 1 of the fiscal year in which the credit assistance was allotted.

(2) Allotted credit assistance for which an application or request for extension is submitted before July 1 will remain available to the State until award or the application is withdrawn or disapproved.

(3) The time for submitting applications will not be extended beyond January 1 of the following fiscal year.

(4) Allotted credit assistance for which timely applications have been disapproved or withdrawn will remain available to the State for reapplication for 90 days after the disapproval or withdrawal without regard to any limitations on the submission of applications established by this section.

(c) A request for extension must contain:

(1) The name of the expected applicant for the credit assistance;

(2) The use to which the assistance would be put;

(3) The amount of funding to be requested;

(4) The date an application is expected to be submitted; and

(5) An explanation of how the project is required as a result of coastal energy activity.

(d) Allotted funds for which neither an application nor a request for extension is received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of that fiscal year.

§ 931.49 Application for recalled or reverted credit assistance.

(a) Funds recalled by or reverted to the Assistant Administrator under § 931.48 will be available to all eligible coastal States by application according to the procedures of this section.

(b) Coastal States may submit applications for loans at any time.

(c) Priority among loan applications will be based on the priority in submitting a completed application.

(d) Under exceptional circumstances the Assistant Administrator may grant priority to a later application on the basis of:

(1) Immediacy of need;

(2) Degree of impact sought to be prevented or mitigated;

(3) Equity of distribution of CEIP credit assistance; and

(4) Availability of other financing, including private sources.

(e) No State will receive more than 50% of the amount available under this section in any fiscal year.

§ 931.50 Application for financial assistance to provide public facilities and services.

(a) Applications for credit assistance under this subpart should be submitted on NOAA Form 36-23. Applications for formula grants should be submitted on NOAA Form 36-25 for construction projects and on NOAA Form 36-26 for nonconstruction projects. Applications should be submitted as soon as allotments of section 308(b) grants and section 308(d) credit assistance are computed.

(b) It is the intent of the Assistant Administrator to process completed applications within 45 days of receipt unless an EIS for the proposed project is required.

(c) All applications for assistance under this subpart must contain the following:

(1) A certification by the State agency designated under § 931.25(a)(4)(ii) that the assistance has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part;

(2) A certification by the State agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) For construction projects, as defined in Office of Management and Budget Circular A-102, the following:

(i) Environmental impact assessment data in sufficient detail to allow the Assistant Administrator to determine whether an EIS will be required under NEPA;

(ii) Copies of all necessary Federal, State and local permit or license applications or approvals;

(iii) A map showing the project in relation to the coastal zone; and

(iv) A Preliminary Engineering Report.

(d) In addition to the certifications and information described in paragraph (c) of this section applications for credit assistance must contain the following information:

(1) A description of the coastal energy activity, the impacts that are sought to be prevented or mitigated, and the proposed public facility or public service in sufficient detail to allow the Assistant Administrator to verify that the proposed public facility or service is required as a result of coastal energy activity.

(2) An estimate of current levels of utilization of public facilities and public services in the borrower's jurisdiction similar to those for which credit assistance is sought; and

(3) Appropriate fiscal schedules, including financial and economic information, required to evaluate the payback potential on the request for credit assistance. Such fiscal schedules will include the best available historical data on the revenues and expenditures of the borrower for five years preceding the year of application.

(4) The information contained in the fiscal schedules described in paragraph (b)(3) of this section will be used to negotiate with the borrower the terms and conditions of the loan or guarantee agreements as described in § 931.52(c) and § 931.53(f) and will be used in setting the conditions under which repayment assistance will be available, as incorporated into the terms and conditions of the loan or guarantee agreements.

(e) In addition to the certifications and information described in paragraph (c) of this section applications for formula grants must contain the following:

(1) A description of the OCS energy activity, the impacts sought to be prevented or mitigated, and the proposed public facility or public service in sufficient detail to allow the Assistant Administrator to verify that the proposed public facility or service is re-

quired as a result of OCS energy activity;

(2) Assurances that the State will repay to the United States:

(i) Any amount received under section 308(b) that the Assistant Administrator determines was expended or committed by the State for purposes not authorized under this subpart,

(ii) Any amount received under section 308(b) that is not expended or committed before the close of the fiscal year following the fiscal year in which the amount was awarded to the State.

(f) Before awarding any financial assistance under this subpart the Assistant Administrator will determine whether an EIS will be required and prepare an EIS when necessary.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 29584, May 21, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 931.51 Special requirements for section 308(d)(1) loans.

(a) *Interest rate.* The interest rate shall be the current average market yield for outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans. The Assistant Administrator may under special circumstances approve lower interests rates. The Assistant Administrator will provide to all coastal States criteria for determining under what conditions special circumstances will be found. These criteria will be updated periodically.

(b) *Eligibility.* A loan to an otherwise eligible borrower may be made even though the fiscal schedules described in § 931.50(d)(3) or other financial information does not indicate adequate coverage for debt service. Loans may be made under section 308(d)(1) to State agencies established for the purpose of financing public facilities. Such loans shall be subject to such terms and conditions as the Assistant Administrator may prescribe.

(c) *Loan agreements.* Each loan agreement will incorporate in detail the conditions of the loan including repayment assistance described in Subpart F of this part. These conditions will be binding upon the Assistant Administrator and the borrower.

(d) *Repayment schedule.* Each loan agreement will contain a mutually agreed-upon repayment schedule, which will be tailored to the repayment ability of the borrower as indicated in the fiscal schedule described in § 931.50(d)(3) or in other financial information. This repayment schedule will set forth the borrower's annual loan service (principal and interest) payments. The borrower may accelerate payment with no prepayment penalties.

(e) *Maturity of loans.* Loans will be made for a period not to exceed the normal useful life of the project. In no event will a loan be made with a maturity exceeding 30 years from the date of the final loan closing.

(f) *Security.* Loans made under section 308(d)(1) will be secured as determined by the Assistant Administrator and in the manner customary or legally allowed under respective State statute and local government charters and ordinances for projects of the type for which credit assistance is requested. NOAA's interest may be perfected, where appropriate, by a filing under the Uniform Commercial Code as adopted by the subject State, or, in any jurisdiction where the Uniform Commercial Code has not been enacted, by the recording of a mortgage.

(g) *Disbursement of loan funds.* Loan funds may be disbursed on a phased basis. Approval of such loan advances will be made after receipt by the Assistant Administrator of:

(1) A favorable preliminary approving opinion of bond counsel on the validity of the proposed interim and final bond or promissory note and,

(2) Satisfactory evidence of receipt of firm construction, service, and/or supply bids as well as compliance with the other loan conditions required to be fulfilled before disbursement. Advances or partial purchases will ordinarily be made in units of not less than 25 percent spaced so as to enable the borrower to pay incurred costs as

they come due. Advances must be deposited in a bank with Federal Deposit Insurance Corporation coverage, and the balances exceeding such coverage must be collaterally secured as provided in 12 U.S.C. 265.

(h) *Interim financing on loan projects.* The terms and conditions of the interim financing are subject to prior approval. Upon request, the borrower will be provided with an appropriate letter of intent to aid the borrower in obtaining interim financing from sources other than the CEIP.

(i) *Bond counsel.* The borrower shall retain bond counsel to represent it in each loan transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

§ 931.52 Special requirements for section 308(d)(2) Federal guarantees.

(a) *Eligibility.* A borrower's legal debt will be considered eligible for guarantee under this subpart if the Secretary of the Treasury approves such debt and it meets other requirements set forth in section 308(f).

(b) *Taxable obligations.* The interest paid on any obligation which is guaranteed under section 308(d)(2) and which is received by the purchaser of such obligation (or the purchaser's successor in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

(c) *Interest subsidy.* The Assistant Administrator may pay out of the Fund, pursuant to the terms of the bond or other evidence of indebtedness, to the coastal State or the unit of general purpose local government issuing an obligation guaranteed under section 308(d)(2) not more than the portion of the interest on such obligation as exceeds the amount of interest that would be due at a comparable rate for loans made under section 308(d)(1) at the time the obligation is guaranteed by the Assistant Administrator.

(d) *Fees for guarantees.* A fee will be levied for providing a Federal guarantee. This fee will be set on the basis of the administrative costs incurred in providing and monitoring such guarantee. The fee may be waived in the event repayment assistance (as described in Subpart F of this part) is required.

(e) *Default procedures and guarantee incontestability.* If a borrower defaults on a bond or other evidence of indebtedness guaranteed under the Fund, the holder of the bond or other evidence of indebtedness may demand, pursuant to the terms of the bond or other evidence of indebtedness, payment from the Assistant Administrator of the principal and accrued interest of the obligation in accord with section 308(f)(5)(B). The validity of such a guarantee shall be considered incontestable, except when the holder of the obligation is guilty of fraud or misrepresentation or was aware of fraud or misrepresentation at the time he purchased the obligation.

(f) *Guarantee agreements.* Each obligation guaranteed under this subpart will entail agreements setting forth in detail the conditions under which the repayment assistance described in Subpart F of this part will be available. These conditions will be binding upon the borrower. In addition, all provisions in the underlying documents for obligations guaranteed under section 308(d)(2) will be subject to the approval and will contain such additional provisions as the Assistant Administrator may require.

(g) *Bond counsel.* The borrower shall retain bond counsel to represent it in each guarantee transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

Subpart F—Repayment Assistance

§ 931.60 General.

This subpart sets forth objectives, purposes and procedures for awarding various forms of repayment assistance under sections 308(d)(3) and 303(b)(5)(A).

§ 931.61 Objectives.

The objectives of the repayment assistance are to ensure that:

(a) Credit obligations will be modified and tailored according to ability to repay so that defaults can be avoided; and

(b) Net fiscal losses to the States or units of general purpose local government resulting from coastal energy activity will be minimized.

§ 931.62 Definitions.

The term "borrower" refers to an eligible coastal State, a special purpose agency of the State, or a unit of general purpose local government that has been awarded credit assistance under section 308(d)(1) or (d)(2).

§ 931.63 Purposes.

(a) The purpose of repayment assistance under section 308(d)(3)(A) through (C) is to assist a borrower who is temporarily unable to meet scheduled repayments of loans or guaranteed obligations.

(b) The purpose of a repayment grant under section 308(b) is to assist a borrower in meeting scheduled repayments of a guaranteed bond when the remedies of section 308(d)(3)(A) through (C) are inadequate.

(c) The purpose of a repayment grant from a State's allotted credit assistance from the fund under section 308(d)(3)(D) is to assist a borrower in meeting scheduled repayments of a loan or guaranteed obligation when the remedies of section 308(d)(3)(A) through (C) are inadequate and formula grants are not available for that purpose. If the State's allotment is insufficient, a grant will be made from the fund.

§ 931.64 Sources of repayment assistance.

(a) *Primary sources.* The primary sources of repayment assistance are modification of credit assistance terms and conditions under section 308(d)(3)(A), refinancing of a loan under section 308(d)(3)(B), or making a supplemental loan under section 308(d)(3)(C) to enable the borrower to repay principal and interest pursuant to the terms of a loan or guaranteed obligation.

(b) *Secondary sources.* If the borrower is unable to meet scheduled repayments by means of one or more of the primary sources of repayment assistance, and if the inability to repay results from a change in scope of the coastal energy activity or the related new population, the secondary sources of repayment assistance may be used to meet obligations. These secondary sources are the proceeds of the State's allotment of formula grants under section 308(b) and grants from the State's allotment of moneys from the fund under section 308(e)(1), or directly from the fund if the State's allotment is insufficient.

§ 931.65 General eligibility.

(a) A borrower is eligible for repayment assistance only if:

(1) It has been awarded a loan under section 308(d)(1) or a guarantee under section 308(d)(2); and

(2) It has submitted a report, as required under § 931.66, updating the fiscal schedules described in § 931.50(d)(3).

(b) A borrower does not have to be in default before qualifying for repayment assistance. The default of a borrower will nevertheless automatically occasion review for repayment assistance by the Assistant Administrator.

§ 931.66 Reports.

After submitting its original credit assistance application, and until the full repayment of its loan or guaranteed obligation, the borrower shall submit periodically to the Assistant Administrator a report updating the information described in § 931.51(c). The frequency of submission of this report will be established by the Assistant Administrator in consultation with the borrower. This report should contain whatever new information the borrower has received and can document concerning the coastal energy activity and its likely effects on revenues and expenditures.

§ 931.67 Review for repayment assistance.

(a) At the request of the borrower or on the initiative of the Assistant Administrator, a review for repayment assistance will be carried out. Before the initiation of this review by the Assistant Administrator, the borrower must submit a report (described in § 931.66) updating the fiscal schedules described in § 931.50(d)(3). The Assistant Administrator will examine the information and forecasts contained in the report, particularly those relating to the status and effects of the coastal energy activity involved.

(b) All terms and conditions of the loan or guarantee, as enumerated in the loan or guarantee agreements, will remain in effect pending the review for repayment assistance.

(c) Even when the likelihood of eventual repayment assistance seems high, the Assistant Administrator will not normally require that the borrower raise its tax rates above or alter its tax methods from those generally prevailing when the applicant is requesting repayment assistance. However, if the tax base or revenues available to the borrower are reduced for reasons unrelated to the failure of the economic activity connected with energy development, the borrower will be expected to meet its principal and interest payments according to the loan or guarantee.

§ 931.68 Award of repayment assistance.

(a) It is the Assistant Administrator's intent to offer repayment assistance within 45 days after the request for repayment assistance described in § 931.67, if, pursuant to the terms and conditions of the loan or guarantee agreements, the borrower is found unable to meet its annual loan service payment or obligation under a guarantee in accord with its repayment schedule because the economic activity generated by the coastal energy activity and associated facilities have failed to provide adequate revenues.

(b) If the Assistant Administrator finds that any coastal State or unit of general purpose local government which is a borrower is unable to meet its obligations pursuant to a loan made under section 308(d)(1) of the Act because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable the State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Assistant Administrator shall, after review of the information submitted by the State or unit pursuant to section 308(e)(3) of the Act, take, subject to the special conditions contained in the loan agreement, any of the following actions:

(1) Modify appropriately the terms and conditions of such loan;

(2) Refinance such loan;

(3) Make a supplemental loan to the State or unit, the proceeds of which shall be applied to the payment of principal and interest due under such loan; and

(4) Make a grant to the State or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan.

(c) When the Assistant Administrator offers one of the courses of action in paragraphs (b)(1) through (4) of this section, the borrower may submit to the Assistant Administrator a formal acceptance of the recommended form of repayment assistance. In the case of a repayment grant from the proceeds of a State's formula grant under section 308(b) for a bond guaranteed under section 308(d)(2), the borrower shall submit this formal acceptance through the State agency designated under § 931.25(a)(4)(i), and the acceptance shall include the adequate assurances required by § 931.50(e)(2). The repayment assistance will take effect as soon as the Assistant Administrator receives the formal acceptance.

(d) If the formula grants allotted the State are insufficient for all the repayment grants recommended by the Assistant Administrator in a fiscal year, the State agency designated under § 931.25(a)(4)(i) shall indicate which bonds it wishes to retire with the proceeds of available formula grants, giving priority to local bonds in accordance with section 308(b)(5)(A). Those borrowers whose bonds the State has indicated it cannot retire with the proceeds of formula grants may request repayment grants from the State's allotment of credit assistance and, when necessary, which may be awarded directly from the fund. Borrowers in States that have no allotted formula grants may request the recommended repayment grants, which will be awarded from the State's allotment of credit assistance and, when necessary, directly from the fund.

(e) If, after the review for repayment assistance, the Assistant Administrator determines that no repayment assistance is warranted, or if the borrower does not formally accept such assistance, the borrower will remain subject to the terms and conditions of the loan or guarantee and to the requirements of Subpart I of this part.

§ 931.69 Appeal procedure.

(a) Whenever a dispute arises concerning the Assistant Administrator's finding made pursuant to § 931.68(a) regarding the existence of conditions which require an offer of repayment assistance the borrower may appeal the Assistant Administrator's decision to the Administrator of NOAA by submitting a request for review to the Office of the Administrator of NOAA.

(b) The Administrator of NOAA will issue a written decision on the appeal within 60 days of the borrower's request for review.

(c) The appeal procedure provided for in paragraphs (a) and (b) of this section is intended to provide a timely and impartial forum for resolving disputes concerning repayment assistance. Such appeal procedures may be initiated by the borrower, but do not expressly or by implication limit the borrower's other remedies at law or in equity. The borrower may seek appropriate judicial relief in a court of competent jurisdiction without the consent of the Assistant Administrator or the Administrator of NOAA, and without first having exhausted the appeal procedures provided in paragraphs (a) and (b) of this section.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

§ 931.70 General.

This subpart states the objectives of financial assistance under section 308(b) and describes its allowable uses. It also describes procedures for applying for section 308(b) grants.

[47 FR 21025, May 17, 1982]

§ 931.71 Objectives.

The objectives for providing assistance under section 308(b) are:

(a) To help coastal States and units of local government in such States to prevent, reduce or ameliorate losses in the coastal zone of valuable environmental or recreational resources when such losses result from coastal energy activity;

(b) To ensure that the person or persons responsible for these environmental or recreational losses pay for their full cost whenever possible; and

(c) To encourage the prevention of environmental or recreational losses by providing assistance only when the losses cannot be prevented through a reasonable exercise of State or local regulatory authorities.

(d) To help coastal States and units of local government plan for the provision of public facilities and public services required as a result of OCS energy activity.

[44 FR 29584, May 21, 1979, as amended at 47 FR 21025, May 17, 1982]

§ 931.72 Definitions.

(a) The term "valuable environmental resource" refers to any of the following to the extent they are located in a State's coastal zone.

(1) Areas of land or water that are or have been largely in a natural state, or whose value derives primarily from ecological considerations;

(2) Important animal and plant populations and their habitat;

(3) Air, water, or noise quality; or

(4) An area that has been designated under a State's approved coastal zone management program or other regional, State or local plans as an area of particular concern for environmental purposes.

(b) The term "valuable recreational resource" refers to areas of land or water located in a State's coastal zone that have characteristics making them desirable for one or more types of recreational activities, or which have been designated under a State's approved coastal zone management program, or other regional, State or local plans, as areas of particular concern or potential use for recreational, preservation or restoration purposes. Included are areas that have important cultural, historic or archeological significance which are essential to the well being of all citizens.

(c) The term "loss" refers to any damage to, or degradation of, or any threat of damage to, or degradation of, a valuable environmental or recreational resource, including the impairment or threat of impairment of public access to that resource and any degradation, or threat of degradation, of the use of a resource that may result from overcrowding.

(d) A loss of a valuable environmental or recreational resource will be considered "unavoidable" if:

(1) The loss is caused by coastal energy activity; and

(i) The loss cannot be attributed to an identifiable person or persons; or

(ii) The costs of reduction or amelioration of the loss cannot feasibly be directly or indirectly assessed against an identifiable person or persons because no reasonable cause of action exists for the collection of money damages; or

(2) The loss is *projected to occur* as a result of current or future coastal energy activity and funds are sought to design, implement, or administer strategies, or projects to prevent, reduce or ameliorate such loss.

(e) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any State; the Federal government; any State, regional, or local government; or any entity of any such Federal, State, regional, or local government.

§ 931.73 Eligibility.

(a) To be eligible for assistance under section 308(b), a coastal State must meet the basic eligibility requirements of Subpart C of this part.

(b) A unit of general purpose local government may apply for financial assistance under this subpart from its State.

[44 FR 29584, May 21, 1979, as amended at 47 FR 20125, May 17, 1982]

§ 931.74 Allowable uses.

(a) Assistance is provided in section 308(b)(5)(C) to help States and units of local government design and implement projects to prevent, reduce or ameliorate unavoidable losses to valuable coastal environmental and recreational resources resulting from coastal energy activity including, but not limited to:

(1) Protection restoration, replacement, acquisition or improvement of environmental or recreational resources.

(2) The design and implementation of programs and strategies to prevent, reduce or ameliorate unavoidable environmental and recreational losses, including the cumulative effects of coastal energy activity.

(3) The cost differential between methods of providing a public facility required as a result of coastal energy activity which meets minimum State environmental and construction standards, and a higher cost method that further reduces an environmental loss.

(b) The following are allowable project costs under this subpart to the extent they are reasonable and necessary to prevent, reduce, or ameliorate unavoidable losses to valuable environmental or recreational resources in the coastal zone:

(1) Land acquisition including fee simple, leases, easements, and rights-of-way.

(2) Architectural, engineering, and other technical service fees or costs except that:

(i) Compensation must be comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation must not be based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards must conform to professionally recognized National standards.

(3) Construction expenses, including, but not limited to, construction materials, fixtures, appurtenances, and fixed machinery and equipment. However the purchase of movable construction related equipment such as dump trucks and excavating equipment will be allowable only if expressly authorized in the grant or loan agreement;

(4) Site preparation and improvement;

(5) The acquisition of movable equipment essential for the protec-

tion, reduction or amelioration of unavoidable losses to valuable coastal environmental or recreational losses.

(c) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

(d) Allowable uses under section 308(b)(5)(B) include:

(1) Planning and study that are necessary to provide new or improved public services that are required as a result of OCS energy activity.

(2) Paying for reasonable costs of administering the provision of assistance under section 308 to the extent that funding for these administrative costs in not available under section 308(c).

[44 FR 29854, May 21, 1979, as amended at 47 FR 21026, May 17, 1982]

§ 931.75 Allotment of section 308(d)(4) environmental and recreational grants.

(a) Funds available in any fiscal year under subsection 308(d)(4) will be allotted among coastal States according to the procedures of this section and will consist of:

(1) Funds appropriated under section 308(d)(4) for that fiscal year;

(2) Funds alloted in previous fiscal years under section 308(d)(4) reverting to the Assistant Administrator under § 931.76;

(3) Funds allotted in previous fiscal years under section 308(d)(4) and recalled under § 931.97 because such funds were expended for unauthorized uses; and

(4) Money from any other source available under section 308(d)(4).

(b) *Allotment computation.* Available funds will be allotted first among those eligible coastal States that do not receive in that fiscal year a section 308(b) formula grant allotment. This allotment will be carried out according to the procedures for allotting credit assistance under § 931.47.

(1) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is less than 5 percent of the amount available that State's allotment will be raised to 5 percent of the amount available.

(2) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is greater than 25 percent of the total amount available then such State's allotment will be reduced to 25 percent of the amount available.

(3) If after the calculations in paragraphs (b)(1) and (2) of this section, the amount that would be required to be allotted exceeds the amount available then each State's allotment will be reduced proportionally until the total allotment equals the amount available.

(4) If after the calculations in paragraphs (b)(1) and (2) of this section, the amount that would be required to be allotted is less than the amount available then such unallotted funds will be available for allotment according to the procedures of § 931.47 among all eligible coastal States.

[44 FR 29584, May 21, 1979; 45 FR 78118, Nov. 25, 1980]

§ 931.76 Reversion of allotted funds.

(a) Allotted funds for which applications are not received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of such fiscal year.

(b) Allotted funds for which applications are received within the fiscal year in which such funds were allotted will remain available to the State until awarded. Funds for which timely applications are disapproved or withdrawn will remain available for reapplication by the State for 60 days after such disapproval or withdrawal. If a substitute application is not submitted for these funds before the 60-day time period expires such funds will revert to the Assistant Administrator at the end of the fiscal year or at the end of the 60-day period whichever occurs last.

(c) *FY 1978 Funds.* Funds allotted in fiscal year 1978 under section 308(d)(4) will be treated as if allotted in fiscal year 1979 and will be subject to the requirements of this section.

§ 931.77 Applications for environmental and recreational grants.

(a) Application for environmental/recreational grants under this subpart should be submitted on NOAA Form 36-26 for construction projects and on

NOAA Form 36-25 for nonconstruction projects. Applications should be submitted as soon as allotments of section 308(b) and section 308(d)(4) funds are computed.

(b) It is the intent of the Assistant Administrator to process completed applications within 45 days of receipt unless an EIS for the proposed project is required.

(c) All applications for assistance under this subpart must contain the following:

(1) A certification by the State agency designated under § 931.25(a)(4)(ii) that the assistance has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part;

(2) A certification by the State agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) A description of the unavoidable environmental or recreational loss, the coastal energy activity causing this loss, and the proposed project in sufficient detail to allow the Assistant Administrator to verify that the proposed project will prevent, reduce, or ameliorate an unavoidable loss of a valuable environmental or recreational resource. The applicant must indicate how the loss is unavoidable as defined in § 931.72.

(4) For construction projects, as defined in the Office of Management and Budget Circular A-102, the following:

(i) Environmental impact assessment data in detail sufficient to allow the Assistant Administrator to determine whether an EIS will be required under NEPA;

(ii) Copies of all necessary Federal, State, and local permit or license applications or approvals;

(iii) A map showing the project in relation to the coastal zone; and

(iv) A Preliminary Engineering Report.

(d) In addition to the certifications and information described in paragraph (c) of this section, applications for formula grants must contain assurances that the State will repay to the United States:

(1) Any amount received under section 308(b) that the Assistant Administrator determines was expended or committed by the State for purposes not authorized under this subpart;

(2) Any amount received under section 308(b) that is not expended or committed before the close of the fiscal year immediately following the fiscal year in which the amount was awarded to the State.

(e) Before awarding any financial assistance under this subpart the Assistant Administrator will determine whether an EIS will be required and prepare an EIS when necessary.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 29584, May 21, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 931.78 Limitations.

The proceeds of grants awarded under sections 308(b) and 308(d)(4) may not be used:

(a) For the prevention, reduction, or amelioration of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, rental, or conversion to other uses of such resource by a State agency or unit of local government when such sale, lease rental or conversion occurred after July 26, 1976;

(b) To pay for that part of the cost of a project designed to prevent, reduce, or ameliorate the loss of a valuable environmental or recreational resource which is incommensurate with the value of the loss;

(c) To pay for that part of the cost of a project designed to prevent, reduce or ameliorate the loss of an environmental resource which can be paid for with funds readily available from any other Federal program.

(d) To pay for that part of a loss:

(1) That occurs after July 26, 1976; and

(2) That could have been prevented by a reasonable exercise of a State's existing regulatory authority.

Subpart H—Lateral Seaward Boundaries

§ 931.80 General.

For the calculations of formula grant allotments under Subpart K, Outer Continental Shelf acreage and production shall be considered adjacent to a particular coastal State if such acreage and production lie on that State's side of the extended lateral seaward boundaries of that State. These extended lateral seaward boundaries of a coastal State shall be determined by delimitation lines established by the Assistant Administrator according to the procedures of this subpart. These delimitation lines are to be established solely for determining a State's adjacency to Outer Continental Shelf acreage and production for the purposes of section 308(b), and they are not intended to have application under any other law or treaty of the United States.

§ 931.81 Establishment of delimitation lines when agreements exist between States.

If a lateral seaward boundary extending to a State's seaward boundary (see the Submerged Lands Act, 43 U.S.C. 1301(b) and 1312) has been clearly defined or fixed by an inter-State compact, agreement, or judicial decision as of July 26, 1976, a delimitation line extending the lateral seaward boundary through the Outer Continental Shelf shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement, or decision. A copy of all such compacts, agreements, or decisions must be submitted to the Assistant Administrator before calculations of State allotments are made. If a portion of a lateral seaward boundary has been clearly defined or fixed by an inter-State compact, agreement or judicial decision as of July 26, 1976, a delimitation line shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement or decision to the extent that such principles are applicable.

§ 931.82 Establishment of delimitation lines when no agreements exist between States.

If no lateral seaward boundary, or any portion thereof, has been clearly defined or fixed by inter-State compact, agreement, or judical decision, a delimitation line extending from the State's seaward boundary through the Outer Continental Shelf shall be established in the following manner:

(a) If, on or before August 4, 1977, a lateral seaward boundary to the State's seaward boundary is delimited or defined by an inter-State compact or agreement, the Assistant Administrator will establish a delimitation line through the Outer Continental Shelf based upon the same principles used to delimit or define the lateral seaward boundary in such compact or agreement. A lateral seaward boundary established by inter-State compact or agreement may be based on any principles which are mutually acceptable to the States involved. When such a boundary requires a measurement from a baseline, that baseline will be as defined in § 931.84(a). The lateral seaward boundary delimited or defined by such a compact or agreement, must be appropriately documented to the Assistant Administrator no later than August 4, 1977. Appropriate documentation shall include data sufficient to define the lateral seaward boundary and may include dimensionally stable base maps, geographical positions, azimuths, computations, and written descriptions.

(b) If a lateral seaward boundary is not defined or delimited by compact or agreement on or before August 4, 1977, delimitation lines will be established by the Assistant Administrator according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and The Contiguous Zone. The Assistant Administrator will extend this time period up to February 4, 1978, if the Governors of the States concerned each request such an extension. The Assistant Administrator also has discretion to extend the time period for other delimitation lines which may be affected by the one for which an extension has been requested. Prior to establishing these delimitation lines, the Assistant Administrator will allow an additional 6-month period during which time the States failing to delimit or define a lateral seaward boundary may submit written arguments in support of their respective positions. After expiration of the period allowed for submission of arguments by States, the Assistant Administrator will establish the required delimitation lines according to the applicable principles of law. The procedures of this paragraph may be invoked at any time after these regulations become effective if the States concerned jointly seek a determination by the Assistant Administrator.

If the lateral seaward boundary is a matter in litigation prior to the time of delimitation by the Assistant Administrator, such delimitation may be deferred by the Assistant Administrator until a final judicial decision is rendered.

(c) If after July 26, 1976, a judical decision is rendered to clearly define or fix a lateral seaward boundary such a decision may be used by the Assistant Administrator in establishing a line of delimitation.

§ 931.83 Establishment of delimitation lines under later compacts or agreements.

If, after February 4, 1977, two or more States enter into or amend an interstate compact or agreement, in order to clearly define or fix a lateral seaward boundary, delimitation lines extending such a boundary through the Outer Continental Shelf will be based on principles used to delimit or define the lateral seaward boundry in such compact or agreement. For the purpose of calculating formula grant allotments under Subpart K, the Assistant Administrator also may accept agreements between States on the proportional sharing of formula grant funds within a specified area, without the need for agreement on a specific line. However, delimitation lines so extended or altered, and allotments so calculated, will not affect grants made previously in accord with calculations under Subpart K.

§ 931.84 Procedures for defining delimitation lines by equidistance principles.

(a) In the event that the Assistant Administrator establishes a line of delimitation based on measurement from a baseline, that baseline will be the intersection of the National Ocean Survey (NOS) low water datum of reference with the land, as described and published by the NOS on large scale nautical charts of the area, as modified by the application of the principles of the Convention on the Territorial Sea and the Contiguous Zone, as interpreted by the Ad Hoc Committee on U.S. Coastline Delimitation.

This committee, which has the responsibility to apply principles of international law and the Convention on the Territorial Sea and the Contiguous Zone in delimiting the territorial sea and the contiguous zone of the United States, will be charged with the identification of the baseline, including closing lines, on NOS charts as required to establish the baselines.

(b) If delimitation lines established by the Assistant Administrator are based on a measurement from the baseline, they shall be delineated by the NOS, which shall determine the geographic positions of these points by either graphical or analytical procedures, and document the delimitation lines for review and comment by the above Ad Hoc Committee and final approval by the Assistant Administrator.

§ 931.85 Formula grants impounded for disputed areas.

(a) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage and production in disputed areas, as determined by the Assistant Administrator, will be impounded in the Treasury of the United States until such time as the required delimitation lines have been established by the Assistant Administrator using the procedures outlined in § 931.82.

(b) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage, production and landings in areas disputed between the Federal Government and the State will be impounded in the Treasury of the United States until such time as the issue is resolved.

Subpart I—General Provisions

§ 931.90 Allowable costs.

(a) Allowable costs will be determined in accord with Federal Management Circular 74-4, Cost Principles Applicable to Grants and Contracts with State and Local Governments (34 CFR Part 255), the grant/loan agreement, and with the unique requirements of the Coastal Energy Impact Program. Specifically, project costs must:

(1) Be necessary and reasonable for proper and efficient administration of the program, not be a general expense required to carry out the overall responsibilities of States or units of local governments;

(2) Be authorized or not prohibited under State or local laws or regulations;

(3) Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items;

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the recipient is a part;

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(6) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period; and

(7) Be net of all applicable credits.

(b) The cost of activities conducted, or assets acquired, prior to approval of an assistance application are allowable costs only when specifically provided for in the grant or loan or agreement and to the extent that they meet the requirements set forth in paragraph (a) of this section, OMB Circular A-102 and FMC 74-4. For nonconstruction projects, such costs must have been incurred not more than three months prior to the grant start date. Purchase options for land and materials essential to the project or program may be an allowable project cost.

§ 931.91 Administrative procedures.

Administrative procedures for grants and credit assistance are based to the maximum extent practicable upon the Office of Management and Budget Circulars A-102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" (34 CFR Part 256).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 29584, May 21, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 931.92 [Reserved]

§ 931.93 Other Federal requirements.

Compliance with all other Federal statutory provisions and regulations which are applicable to Federal assistance programs and recipients of such assistance is a condition of CEIP assistance.

§ 931.94 Environmental review.

Before awarding CEIP financial assistance the Assistant Administrator will consider the environmental consequence of each proposed use of CEIP funds according to the provisions of this section.

(a) For each proposed construction project the Assistant Administrator will conduct an environmental impact assessment pursuant to NEPA and the Council of Environmental Quality Guidelines (40 CFR 1500.1 et seq.) to determine whether an EIS is required except that such an assessment will not be required for minor repair, replacement, maintenance, or improvement projects.

(b) An environmental assessment under NEPA and the CEQ Guidelines will not be required for:

(1) The payment of administrative costs.

(2) Repayment assistance for projects previously funded under the CEIP.

(3) Environmental assessments.

(4) Other nonconstruction projects except that the Assistant Administrator will monitor expenditure for nonconstruction projects to assure that the policies of NEPA are effectively implemented.

(5) Any project that is exempt from environmental review under any other Federal statute or regulation.

(c) All data and information on the environmental impacts of a proposed project will be provided by the potential recipient of assistance under this part, according to the CEIP Environmental Guidelines.

(d) The Assistant Administrator may prepare a regional or programmatic EIS on a group of similar or related projects, if appropriate.

(e) The provisions of financial assistance for construction projects is subject to compliance with the requirements of Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) and the requirements for protecting historical and cultural properties established by the Council on Historical reservation (36 CFR Part 880).

§ 931.95 Records.

(a) All initial recipients of financial assistance under section 308 shall keep and preserve, and shall require each unit of local government to which it passes the assistance to keep and preserve, detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. All recipients shall also keep and preserve such full written financial records, accurately disclosing the amount and the disposition of the assistance, together with the amounts and disposition of other funds applied to the project, program, or other undertaking, as shall adequately establish compliance with the requirements of section 308, the terms and conditions upon which such financial assistance was made, and the standards for financial management systems contained in Attachment G to Office of Management and Budget Circular A-102. Such records shall be retained until:

(1) An audit is completed and all questions arising from it are resolved; or

(2) Three years after completion of the project, program, or other undertaking and submission of the final Financial Status Report, whichever is sooner.

§ 931.96 Audit.

The Assistant Administrator, the Secretary of Commerce, and designee of the Assistant Administrator or Secretary of Commerce, and the Comptroller General of the United States shall have access for purposes of audit and examination to any records, books, documents, and papers which belong to, or are used under this part or controlled by, any recipient of the assistance or any person who entered into any transaction relating to such financial assistance and which is pertinent, for purposes of determining if such financial assistance is being or was used in accordance with section 308, the terms and conditions upon which such financial assistance was made, Office of Management and Budget Circular A-102, and Federal Management Circular 74-4.

§ 931.97 Recovery of funds.

(a) This section sets forth requirements and procedures to ensure that grant proceeds received by States may be recovered by NOAA if such proceeds have been expended or committed for the purposes and activities other than those set forth in the grant award, and if section 308(b) grant proceeds have not been expended or committed by the State before the close of the fiscal year immediately following the fiscal year of project award.

(b) *Procedures for the recovery of funds.* (1) Upon receipt from NOAA of a written request for repayment which contains a finding that the proceeds of a grant received by the State have been expended or committed by the State for purposes other than those set forth in the grant award, and, in the case of 308(b) grant proceeds, if the funds have not been expended or committed before the close of the fiscal year immediately following the fiscal year in which the grant proceeds were awarded, such State shall provide a written response within 15 days to either refute or admit such findings.

(2) NOAA shall make a determination that repayment by the State will or will not be required, and shall notify the State of this determination no later than 45 days from the receipt by the State of the request for repayment described in (b)(1) of this section.

(3) If NOAA determines that repayment is required, the State shall have 30 days from the date of receipt of such determination to file a request for reconsideration with NOAA or 60 days from the date of receipt of such determination to make a repayment by check in the amount stated in such determination.

(i) If the State's request for reconsideration is denied, the State shall have 15 days from the date of such denial to make a repayment by check in the amount determined to be owed to the United States.

(ii) If, as a result of the State's request for reconsideration, NOAA modifies its determination of the amount required to be repaid by the State, such State shall have 15 days from the date of such modification to make the repayment, if any, by check.

(4) If no repayment is received within the time period established by paragraph (b)(3) of this section, NOAA shall take necessary action to recover the amount due. Methods of recovery may include, but are not limited to:

(i) The modification or termination of a grant being received by such State under section 308(b);

(ii) The modification or termination of financial assistance under sections of the Act other than section 308(b);

(iii) The withholding of future financial assistance to the State under any section of the Act; and

(iv) The modification or termination of financial assistance being received by such State under other programs administered by the Department of Commerce, or the withholding of future financial assistance to such State under these programs.

(5) Actions undertaken under paragraph (b) of this section shall not in any way prejudice any rights of NOAA to pursue such other remedies as may be legally available and appropriate under the circumstances, including the referral of the claim against the State to the Department of Justice.

(c) If a State has received a written request for repayment under § 931.97(b)(1) NOAA may require such additional assurances as it finds necessary to protect the interests of the United States in the making of grants to the State.

§ 931.98 Other sources of Federal funding.

(a) The Assistant Administrator will, to the extent practicable, administer the provision of financial assistance under section 308:

(1) On the basis that section 308 financial assistance will be in addition to and not in lieu of any Federal funds that any coastal State or unit of local government may obtain under any other Federal law; and

(2) To avoid duplication of Federal funds that any coastal State or unit of local government may obtain under any other Federal law.

(b) When assistance from other Federal programs is insufficient to cover a project or when combinations of assistance from multiple Federal programs are appropriate and beneficial, States and units of local government may request joint funding by the CEIP and other Federal programs in accordance with OMB Circular A-111, 41 FR 32040.

(c) The term "joint funding" means the coordination of multiple Federal assistance under the authority and provisions of the Joint Funding Simplification Act of 1974 (Pub. L. 93-510) in support of and consistent with the CEIP.

§ 931.99 Coordination with State coastal zone management agency.

(a) In the event the coastal State is implementing a management program approved under section 306, all applications for financial assistance under section 308 shall be reviewed for consistency with the State's management program by the State agency administering the State's coastal management program in accordance with the requirements of section 307(d).

(b) In the event the coastal State is developing a management program pursuant to section 305 or in a manner consistent with the policies of section 303, all applications for financial assistance under section 308 shall be reviewed for compatibility with the State's developing coastal management program by the State agency developing the management program.

Subpart J—Intrastate Allocation of Financial Assistance

§ 931.110 General.

This subpart sets forth policies, requirements, and criteria required by sections 308(e)(2) and (g)(2) and related to the intrastate allocation of financial assistance provided under section 308.

§ 931.111 Objective.

The objective of these requirements is to assure, to the maximum extent practicable, that section 308 assistance allotted to coastal States is distributed among units of local government in amounts which are proportional to need and in a manner which is equitable and expeditious.

§ 931.112 Intrastate allocation.

Each coastal State must establish a process to allocate its allotted section 308 (b), (c)(1), (d) assistance among State agencies and units of local government based on need for such assistance. This process may be periodically reviewed by the Assistant Administrator to determine whether its application results in a distribution of assistance which, to the maximum extent practicable, is proportional to need. States may amend or modify their intrastate allocation process subject to approval by the Assistant Administrator. The form of the allocation process will depend on the amount of assistance allotted to the State.

(a) States that receive in a fiscal year an allotment of $1 million or more in grants under sections 308 (b), (c)(1) and (d)(4) must develop an intrastate allocation process for that fiscal year's allotment. Such process must be approved by the Assistant Administrator and must:

(1) Indicate the State agency designated under § 931.25 which will assume the lead role for administering the process;

(2) Describe the methods and procedures used to assure direct and effective participation by affected State agencies and units of local Government throughout the development and implementation of the allocation process.

(3) Describe the methods to be used to allocate financial assistance and to evaluate and select projects based on criteria which include immediacy or severity of impacts, the fiscal capacity of units of local Government, and protection of the environment;

(4) Assure that information on the allocation of financial assistance is available to the public throughout the allocation process;

(5) Stipulate reasonable time limits for the allocation of financial assistance; and

(6) Establish a timely procedure by which units of local government may appeal to the State;

(i) The results of its allocation decisions; or

(ii) Whether the State complied with the intrastate allocation process described in this section and approved by the Assistant Administrator.

(b) Those States which receive an allotment of less than $1 million in 308 grants in any fiscal year must provide under sections 308 (b), (c)(1), (d)(4) an allocation process which will be submitted along with applications and requisitions for section 308 assistance. This process will not be subject to prior approval of the Assistant Administrator. The submission by the State must describe:

(1) The methods used to evaluate and select projects and to allocate financial assistance.

(2) The methods used to provide for formal notification of, direct consultation with, and comments by, affected State agencies and units of local government in the allocation of all 308 funds.

(c) Eligible U.S. Territories are exempt from the requirements to provide an intrastate allocation process.

§ 931.113 Forms of assistance.

To the maximum extent practicable and in accord with the intrastate allocation process established pursuant to § 931.112:

(a) States that receive grants under section 308 for purposes specified in Subparts D and G of this part must pass this assistance through to State agencies and units of local government in the form of grants;

(b) States that receive grants under section 308 for purposes specified in Subparts E and F of this part must pass this assistance through to State agencies and units of general purpose local government in the form of grants;

(c) States that are allotted credit assistance under section 308 (d)(1) and (d)(2) must pass this assistance through to State agencies and units of general purpose local government using one of the following methods:

(1) State agencies may borrow to provide public facilities and public services needed to meet either State or local needs;

(2) State agencies may borrow to reloan or to grant this assistance to units of general purpose local government for public facilities and public services needed to meet local needs; or

(3) State agencies and units of general purpose local government may submit applications to the State to borrow from the Fund to provide needed public facilities and public services.

§ 931.114 Appeal to Assistant Administrator.

(a) A unit of local government may appeal to the Assistant Administrator to determine whether the State complied with the approved intrastate allocation process described in § 931.112 and approved by the Assistant Administrator. Such an appeal must be made within 30 days after the unit of local government has exhausted the appeal procedure described in § 931.112. Such an appeal will be limited to the application of the State's process and the Assistant Administrator may require additional information necessary to make an objective review and finding. The Assistant Administrator will notify the State and unit of local government of NOAA's findings within 45 days of the receipt of the appeal.

(b) If the Assistant Administrator finds that the State has not substantially complied with the approved process, section 308 assistance will be withheld until the State reallocates the assistance in accord with the approved process.

Subpart K—Allotment of Section 308(b) Formula Grants

§ 931.120 General.

The purpose of this subpart is to describe the procedure for allotting among eligible coastal States moneys appropriated in any fiscal year under section 308(b).

§ 931.121 Definitions.

(a) The term "first landed" in a particular coastal State refers to oil and natural gas produced from the OCS that is first unloaded from tankers or barges within that state, or is brought to shore in pipelines that first touch non-submerged land and create a significant impact in that State.

(b) The term "adjacent" is defined in § 931.80.

§ 931.122 OCS regions.

For purposes of this subpart in the coastal States will be assigned to OCS regions as follows:

(a) Region I: Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, the Commonwealth of Puerto Rico, Virginia and the Virgin Islands.

(b) Region II: Alabama, Florida, Louisiana, Mississippi, and Texas.

(c) Region III: California, Hawaii, Oregon, and Washington.

(d) Region IV: Alaska.

§ 931.123 Impacted State.

(a) For purposes of awarding a two percent formula grant allotment the Assistant Administrator will determine that a State "is being or will be impacted by OCS energy activity" if:

(1) The Assistant Administrator finds that a State was impacted by OCS energy activity that took place in

the fiscal year preceding the fiscal year for which the allotments are calculated; or

(2) In the Assistant Administrator's judgment that State will be impacted as a result of OCS energy activity that took place in the fiscal year preceding the fiscal year for which the formula grant allotments are calculated.

(b) The projection of impacts that "will" occur necessarily implies that the Assistant Administrator make anticipatory judgments that may not be supported by hard data. The Assistant Administrator will decide which States "will be impacted" within the context of the purposes for which the CEIP was established and will base the analysis of future impacts on the immediacy of impact, equity in distribution of appropriated funds, and the reasonable need for such funds.

(c) The impacts that the Assistant Administrator will consider when making two percent formula grant allotments include, but are not limited to:

(1) Any significant loss, damage, degradation of or impairment of access to any valuable coastal environmental or recreational resource or any threat of such loss, damage, degradation, or impairment;

(2) Any changes or threat of changes in the social, governmental or economic infrastructure in the coastal zone which would necessitate the provision of new or improved public facilities or public services; or

(3) Any demographic changes or threat of change in the coastal zone which would necessitate the provision of new or improved public facilities or public services or which would degrade the quality of the human environment.

§ 931.124 Eligibility.

No coastal State will receive an allotment of section 308(b) formula grants unless it meets the basic eligibility requirements of Subpart C.

§ 931.125 Allotment of section 308(b) formula grants.

(a) Funds available under section 308(b) will be allotted according to the procedures specified in this section and will consist of:

(1) Funds appropriated under section 308(b) in a fiscal year; and

(2) Funds available in a fiscal year under section 308(b) from any other sources.

(b) *State review.* (1) Tentative allotments of formula grants will be computed and submitted to all eligible coastal States as soon as practicable after OCS acres leased, OCS oil and gas produced, and OCS oil and gas first landed data become available for the fiscal year preceding the year for which allotments are calculated. These data usually become available in November of the fiscal year for which allotments are calculated.

(2) Eligible coastal States will have 30 days to submit comments on these tentative allotments to the Assistant Administrator who will revise the allotments as appropriate.

(3) Final allotments will be calculated no more than 30 days after the end of the 30-day State review period.

(c) The allotment of section 308(b) formula grants that a State receives will be the result of the calculations in paragraphs (c)(1) through (5) of this section.

(1) *Formula amount.* The amount allotted to an eligible coastal State in a fiscal year under the formula specified in section 308(b)(2) is the formula amount and is given by the following equation:

$$\text{Formula amount} = \frac{1}{2}\,\frac{A}{A_T} \times TA + \frac{1}{4}\,\frac{P}{P_T} \times TA + \frac{1}{4}\,\frac{L}{L_T} \times TA$$

A = The amount of OCS acreage that is adjacent to the eligible coastal State and is newly leased by the Federal government in the fiscal year preceding the fiscal year for which the allotment is made.

A_T = The total amount of OCS acreage that is adjacent to all eligible coastal States and is newly leased by the Federal government in the preceding fiscal year.

P = The volume of oil and natural gas produced from OCS acreage adjacent to the eligible coastal State in the preceding fiscal year.

P_T=The total volume of oil and natural gas produced from OCS acreage adjacent to all eligible coastal States in the preceding fiscal year.

L=The volume of oil and natural gas produced from OCS acreage that is first landed in the State in the preceding fiscal year.

L_T=The total volume of oil and natural gas produced from the OCS that is first landed in all eligible coastal States in the preceding fiscal year.

TA=The total amount of funds available for section 308(b) purposes in the fiscal year for which the allotment is made.

(2) *Two percent amount.* The Assistant Administrator will allot to any eligible coastal State in a fiscal year an amount equal to 2% of the total amount available in that fiscal year under section 308(b) if:

(i) That State's formula amount is greater than zero but less than 2 percent of the total amount available in such fiscal year; or

(ii) That State's formula amount is zero; and

(A) The Assistant Administrator determines that State is being or will be impacted by OCS energy activity; and

(B) The Assistant Administrator determines that State will be able to expend or commit the proceeds of such allotment in accordance with the purposes set forth in section 308(b)(5); and

(C) Any other eligible coastal State in the same OCS region is allotted a formula amount greater than zero.

(3) *Proportional reduction.* If after calculating the formula amount and the 2 percent amount the total amount of funds that would be required to be allotted is greater than the total funds available in a fiscal year under section 308(b), the Assistant Administrator will deduct from each coastal State whose formula amount exceeds 2 percent of the amount available an amount represented by the following expression:

$$(T-TA) \times \frac{F - 2\%\text{ of }TA}{SF - (2\%\text{ of }TA \times S)}$$

T=Total amount that would be required to be allotted to all coastal States before the proportional reduction.

TA=Total amount available under section 308(b).

F=Formula amount for that State.

SF=Sum of the formula amounts that exceeds 2 percent of the amount available.

S=Number of States where formula amount exceed 2 percent.

(4) *Maximum amount.* If after the calculations performed in paragraphs (c)(1) and (3) of this section any coastal State would receive an allotment that is greater than 37½ percent of the amount available, the Assistant Administrator shall reduce the allotment of that State to 37½ percent of the amount available.

(5) *Redistribution.* Any amount not allotted by virtue of application of paragraph (c)(4) of this section will be reallotted proportionally among those coastal States that at this point in the calculation receive an allotment greater than 2 percent but less than 37½ percent of the amount available. For purposes of this paragraph "reallotted proportionally" means allotment in accordance with the provisions of paragraph (c)(1) of this section except that only those States that receive an allotment greater than 2 percent and less than 37½ percent will participate in the calculations described in that paragraph.

[44 FR 29584, May 21, 1979; 44 FR 31011, May 30, 1979]

§ 931.126 Recall of formula grants.

(a) Except as provided in Subpart C, funds allotted under this subpart will remain available for application by the recipient coastal State until September 30, 1988. Funds not applied for by this date will be returned to the United States Treasury.

(b) Funds allotted under this subpart and which have been awarded to a State must be expended or committed by the State by the end of the fiscal year immediately following the fiscal year in which such funds were awarded or be subject to recovery under § 931.97.

(c) If an application for which funds have been committed by a State is withdrawn either within sixty (60) days before the end of the fiscal year that follows the fiscal year in which the funds were awarded to the State, or anytime after the end of the fiscal year that follows the fiscal year in which the funds were awarded to the State, the State will have sixty (60) days to resubmit an application for these funds. If a substitute application is not submitted within this time period the funds will be subject to recovery under § 931.97. Funds recovered under this section and § 931.97 will be reallotted among eligible coastal States as soon as practicable.

[44 FR 31011, May 30, 1979]

PART 932—COASTAL ZONE MANAGEMENT INTERSTATE GRANTS

Subpart A—General

Sec.

932.1 Basic purposes.
932.2 Definitions.
932.3 Use of grants.

Subpart B—Eligible Entities

932.10 General.
932.11 Eligible entities.
932.12 Funding priorities among entities.

Subpart C—Review/Approval Procedures

932.20 General.
932.21 Presubmission consultation.
932.22 Formal submission and review.

Subpart D—Permanent Interstate Coastal Management Compacts or Agreements

932.30 General.
932.31 Review by NOAA for nonconflict with laws and treaties of the United States.
932.32 Federal consultation procedures.

Subpart E—Application for Interstate Grants

932.40 General.
932.41 Applicant responsibility.
932.42 Application procedure.
932.43 Approval of applications.
932.44 Amendments.

AUTHORITY: Sec. 309, Coastal Zone Management Act of 1972. (Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013), unless otherwise noted.

SOURCE: 42 FR 19854, Apr. 15, 1977, unless otherwise noted.

Subpart A—General

§ 932.1 Basic purposes.

(a) This section establishes the basic purposes for which interstate grants pursuant to subsections 309(a) and 309(d) of the Act may be awarded. The basic intent of interstate grants under these subsections is to provide support for cooperative interstate and regional efforts on the part of coastal states during the program development phase undertaken pursuant to section 305 of the Act and/on the program administration phase undertaken pursuant to section 306 of the Act. Cooperative efforts may consist of coordinating coastal zone planning, policies, and programs; and/or studying, planning, and implementing compatible coastal zone policies. These cooperative efforts may also consists of establishment of effective mechanisms, including especially State-Federal consultation procedures, for the identification, examination and cooperative resolution of mutual problems with respect to marine and coastal areas affecting the applicable coastal zone.

(b) *Comment.* Statutory Citation, subsection 309(a):

> The coastal states are encouraged to give high priority—
>
> (1) To coordinating state coastal zone planning, policies, and programs with respect to contiguous areas of such states; and
>
> (2) To studying, planning, and implementing unified coastal zone policies with respect to such areas * * *

(c) *Comment.* Statutory Citation, subsection 309(b):

> The consent of the Congress is hereby given two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for—
>
> (1) Developing and administering coordinated coastal zone planning, policies and programs pursuant to sections 305 and 306; and
>
> (2) Establishing executive instrumentalities or agencies which such states deem desirable for the effective implementation of such agreements or compacts * * *

(d) *Comment.* Statutory Citation, subsection 309(d):

> If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal states to create and maintain a temporary planning and coordinating entity to—

(1) Coordinate state coastal zone planning, policies, and programs with respect to contiguous areas of the states involved;

(2) Study, plan, and implement unified coastal zone policies with respect to such areas; and

(3) Establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone * * *

§ 932.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration, have been duly executed by Amendment 5 of Department of Commerce Organization Order 25-5A, dated October 13, 1976; and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76-82, effective October 13, 1976.

(c) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "contiguous areas" means those land or water areas in or affecting the coastal zone of two or more states which collectively constitute an interrelated ecological, economic, social, or administrative unit for the purposes for which an interstate grant is sought. Areas will be considered contiguous if they involve or affect the coastal zones of any of the following groups of states, or any subgroups thereof:

(1) Pacific States including California, Oregon, Washington, Alaska, Hawaii, Guam and/or American Samoa;

(2) Great Lakes States including Michigan, Minnesota, Wisconsin, Ohio, Illinois, Indiana, New York and/or Pennsylvania;

(3) New England States including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and/or New York;

(4) Mid-Atlantic States including Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland and/or Virginia;

(5) South Atlantic States including Virginia, North Carolina, South Carolina, Georgia, and/or Florida; and

(6) Gulf States including Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico and/or the U.S. Virgin Islands.

(e) The term "marine and coastal areas" means the State's defined coastal zone including waters (and lands thereunder) within a State's territorial limit as well as waters (and lands thereunder) beyond this territorial limit but within the extended lateral seaward boundaries of States as determined pursuant to subsection 308(b)(3)(B) of the Act.

(f) The term "temporary" means either the duration of a particular project in which case "temporary" means one year, or the life of a particular entity which may be created for purposes of receiving grants under section 309 of the Act, in which case "temporary" means no longer than September 30, 1980, which is the expiration date for authorizations under this section, pursuant to subsection 318(a)(4) of the Act.

§ 932.3 Use of grants.

(a) Pursuant to subsections 309(a) and 309(d) of the Act, the Associate Administrator will consider for funding any cooperative effort involving contiguous areas of two or more States if the purposes of such cooperative effort are consistent with section 305 or 306 of the Act and are designed specifically to:

(1) Coordinate State coastal zone planning, policies and programs with respect to contiguous areas of such States; and/or

(2) Study, plan and/or implement compatible coastal zone policies with respect to such contiguous areas; and/or

(3) Establish effective mechanisms for the identification, examination and/or cooperative resolution of mutual problems with respect to marine and coastal areas which affect, directly or indirectly, the applicable

coastal zone. Particular consideration should be given to establishment of State-Federal consultation procedures.

(b) The Associate Administrator will deem an interstate cooperative effort to be consistent with section 305 or 306 of the Act if the activities proposed are related to or derived from goals, objectives, mutual issues, problems, and/or needs identified by one or more States in their approved section 306 management programs or their program development or program implementation work programs funded pursuant to section 305 or section 306 respectively.

(c) Specific work activities in any interstate cooperative effort funded pursuant to section 309 of the Act may include, but are not limited to:

(1) Collection and analysis of data;

(2) Preparation and dissemination of reports and position papers;

(3) Development of agreements with individual Federal agencies, including regional offices of these agencies;

(4) Establishment of interstate agreements or compacts pursuant to subsection 309(b) of the Act; and

(5) Holding of workshops and similar, necessary meetings or conferences.

(d) The Associate Administrator will not consider funding activities under this section of the Act which could be funded more appropriately under section 308 or section 310 of the Act.

(e) The Associate Administrator will not consider funding under section 309 of the Act any work activity which will be performed by an interstate entity on behalf of only a single coastal state. This prohibition on the use of section 309 grants does not preclude a state from exercising its option pursuant to subsections 305(g) and 306(f) of the Act to allocate, with the approval of the Associate Administrator, portions of its grant to any interstate agency for carrying out approved work program activities.

Subpart B—Eligible Entities

§ 932.10 General.

(a) The Associate Administrator will consider an applicant eligible for a grant under section 309 of the Act if the applicant meets the criteria listed in § 932.11 and if the applicant and the proposed grant activities have the explicit, written support of the state management agencies designated pursuant to § 920.52 or § 923.33 of this chapter. The content of what must be in this written support is contained in § 932.42.

(b) Applications will be considered from more than a single interstate or bistate entity in a particular region (as listed in § 932.2(d)), depending on the nature of the issues to be addressed, the qualifications of entities to address those issues, and the nature and number of states affected by the applications.

§ 932.11 Eligible entities.

(a) The Associate Administrator will consider any of the following to be eligible entities for the purpose of applying for grants pursuant to subsection 309(a) or 309(d) of the Act:

(1) An executive instrumentality or agency established by an interstate agreement or compact pursuant to subsection 309(b);

(2) A temporary plannning and coordinating entity created by two or more States in a region, with the concurrence of the Associate Administrator, to serve the purposes of subsection 309(d);

(3) An existing regional, interstate entity designated by the States involved, and with the concurrence of the Associate Administrator, to address issues identified in § 932.3; or

(4) A coastal State funded pursuant to section 305 or section 306 of the Act, and with the concurrence of the Associate Administrator, acting on its own behalf and that of one or more other States in a particular region.

§ 932.12 Funding priorities among entities.

(a) Higher funding priority will be given to interstate entities which contain a State-Federal consultation procedure for the indentification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

(b) *Comment.* Statutory Citation, subsection 309(c):

Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to adopt a Federal-State consultation procedure for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

(c) *Comment.* Statutory Citation, subsection 309(d)(3):

If no applicable interstate agreement or compact exists, The Secretary may * * * make grants to assist any group of two or more coastal states to create and maintain a temporary planning and coordinating entity to * * * establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

(d) Existing interstate entities will be given funding priority over temporary entities created pursuant to subsection 309(d) of the Act, where such existing entities can be demonstrated to have the capability or working experience necessary to accomplish the proposed purpose(s) for which the temporary entity would be created.

Subpart C—Review/Approval Procedures

§ 932.20 General.

(a) This section establishes the procedures by which the Associate Administrator will accept and review grant applications pursuant to subsection 309(a) or 309(d) of the Act. These procedures will include presubmission consultation on the part of the applicant with the Associate Administrator, followed by a formal submission by the applicant, and a formal review by the Associate Administrator.

§ 932.21 Presubmission consultation.

(a) States or interstate entities which have identified problems or needs requiring interstate corrdination are expected to consult with the Associate Administrator prior to the formulation of a formal application for a section 309 grant. The purpose of such consultation will be to determine whether the proposed interstate effort will be consistent with the purposes of section 305 or 306 of the Act, and with the affected States' developing or approved coastal management programs. Such consultation also will facilitate the early determination of the eligibility of the proposed entity and proposed work items. Further, if Federal agencies are to be involved, such consultation also will enable the Associate Administrator to assist States in securing early participation by these Federal agencies in defining mutual problems to be resolved and in determining the procedure to be used for State-Federal consultation.

(1) Where presubmission consultation is initiated by an entity other than the States, that entity should demonstrate evidence of support by the designated coastal management agencies of those States which may be expected to be involved in or affected by the proposed application. At the presubmission consultation stage, evidence of support need not consist of the written documentation, pursuant to § 932.42, required for a formal application.

§ 932.22 Formal submission and review.

(a) After presubmission consultation, a formal application may be submitted by any entity which has been deemed by the Associate Administrator to be an eligible applicant.

(1) A formal submission will contain the information required pursuant to § 932.42. In no case will the Associate Administrator consider an application unless it contains the documentation specified in § 932.42 with respect to States' review and concurrence.

(b) Upon receipt of a formal grant application, the Associate Administrator will initiate an evaluation of the proposal in terms of both programmatic and budgetary considerations.

(1) If the proposal requires the involvement of one or a number of Federal agencies, that proposal will be forwarded to the referenced agency (agencies) for their review and comment within thirty days from receipt of the proposal from the Associate Administrator.

(c) The Associate Administrator will award a grant pursuant to section 309 of the Act assuming availability of funds, if the application:

(1) Is consistent with the purposes and uses of Section 309 grants contained in §§ 932.1 and 932.3;

(2) Meets the financial and budgetary requirements contained in § 932.42; and

(3) Is concurred with by affected Federal agencies, only when their participation is essential to accomplishing the proposed work program. Otherwise, Federal agency concurrence is not necessary for the Associate Administrator to approve an interstate grant.

Subpart D—Permanent Interstate Coastal Management Compacts or Agreements

§ 932.30 General.

(a) Subsection 309(b) of the Act establishes prior Congressional consent for two or more coastal States to negotiate and enter into agreements or compacts for certain purposes related to coastal management, provided these compacts or agreements do not conflict with any law or treaty of the United States. This subpart establishes the procedure by which the Associate Administrator will review such compacts or agreements, prior to their ratification, to insure that there is no conflict with U.S. laws or treaties.

§ 932.31 Review by NOAA for nonconflict with laws or treaties of the United States.

(a) Pursuant to subsection 309(b) of the Act, two or more coastal States may enter into agreements or compacts for the following two broad purposes:

(1) Development and administration of coordinated coastal zone planning, policies and programs pursuant to sections 305 and 306 of the Act (i.e., supportive of State coastal management program development or implementation); and

(2) Establishment of executive instrumentalities or agencies which two or more States deem desirable for effective implementation of such agreements or compacts.

(b) Prior Congressional approval is given for such compacts or agreements provided they do not conflict with laws or treaties of the United States. To insure that States do not expend time and money unnecessarily in negotiating and entering into compacts or agreements that may conflict with existing United States laws or treaties, it is recommended that, prior to final ratification of a subject compact or agreement, the relevant document be submitted to the Associate Administrator. The Associate Administrator will undertake a review of the proposed agreement or compact, in consultation with the Department of Justice and with other Federal agencies as appropriate. In order to expedite this review, States are advised to submit relevant documents to the Associate Administrator as early in the negotiation process as is reasonably possible.

(c) *Comment.* Statutory Citation, subsection 309(b):

> The consent of Congress is hereby given to two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States * * *. Such agreements or compacts shall be binding and obligatory upon any state or party thereto without further approval by Congress.

§ 932.32 Federal consultation procedures.

(a) Where a State-Federal consultation procedure is adopted pursuant to subsection 309(c) of the Act, the participation of the following, ex officio, shall be included:

(1) The Associate Administrator;

(2) The Secretary of the Interior;

(3) The Chairman of the Council on Environmental Quality;

(4) The Administrator of the Environmental Protection Agency;

(5) The Secretary of the department in which the Coast Guard is operating;

(6) The Administrator of the Federal Energy Administration; or

(7) Their designated representative.

(b) The Associate Administrator encourages the inclusion and participation of other Federal agencies, as appropriate, in this consultation procedure.

(c) *Comment.* Statutory Citation, subsection 309(c):

* * * The Secretary of the Interior, the Chairman of the Council on environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Administrator of the Federal Energy Administration or their designated representatives shall participate ex officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

Subpart E—Application for Interstate Grants

§ 932.40 General.

(a) The purpose of this this section is to define the procedures by which grantees apply for and administer grants under section 309 of the Act and to provide guidelines regarding the content of applications for interstate grants. These procedures shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Grants shall not exceed ninety percent of the total cost of the interstate project proposed in the grant request. Federal funds received from other sources cannot be used to match section 309 grants. Match provided by the applicant may consist of cash or in-kind services as provided in the Manual.

(c) *Comment.* Statutory Citation, subsection 309(a)(2);

* * * Such coordination, study, planning, and implementation may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 per centum of the cost of such coordination, study, or implementation, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 305 and 306.

(d) *Comment.* Statutory Citation, subsection 309(d)(3):

* * * The amount of such grants shall not exceed 90 per centum of the cost of creating and maintaining such (a temporary planning and coordinating) entity.

(e) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms costs and grant project pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provisions of the General Services Administration Federal Management Circular 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

§ 932.41 Applicant responsibility.

(a) The application will designate the entity to receive and administer grants pursuant to section 309 of the Act. The applicant must be legally and administratively capable of receiving and administering such grants.

(b) The grantee will be administratively and fiscally responsible for all aspects of the grant, including any subcontracts made by the grantee.

§ 932.42 Application procedure.

(a) All applications are subject to the provisions of E.O. 12372.

(b) All applications shall contain documentation signed by the head of the designated State agencies for coastal management program development or program administration designated pursuant to §§ 920.52 and 923.33 of this chapter respectively of the affected States and, where required by State law or interstate agreement, by the Governors of those States, that the designated State agency:

(1) Has reviewed the application and finds the purposes for which the grant will be used are consistent with developing or approved coastal management programs;

(2) Has reviewed the application and supports the proposed work program;

(3) Has reviewed the capabilities and functions of the applicant entity and supports that entity for purposes of carrying out the activities described in the application; and

(4) Where the applicant is an entity established pursuant to subsection

309(b) of the Act, the application will contain a copy of the compact or agreement, pursuant to which the entity was created, and documentation that the compact or agreement does not conflict with any law or treaty of the United States. The copy of the compact or agreement and the documentation shall be required only upon initial application for a section 309 grant and will not be required for subsequent applications from the same entity.

(c) The form SF-424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with requirements of E.O. 12372, including the resolution of any problems raised about the proposed project. The Associate Administrator will not accept applications that are substantially deficient in adherence to either E.O. 12372 requirements or the documentation required pursuant to paragraph (b) of this section.

(d) In Part IV, the Program Narrative, the applicant shall respond to the following requirements:

(1) A clear description of the contiguous areas on which the cooperative effort will focus, including a listing of the States' involved in and/or affected by the cooperative effort;

(2) A general discussion of the purposes for which the interstate grant will be used, including the relationship of grant activities to the developing or approved coastal management programs of affected States;

(3) A discussion of the anticipated results of the proposed cooperative effort, including how these results may be expected to affect or be integrated into the coastal management program of affected States;

(4) A description of the work program to be undertaken during the grant period. This work program will include:

(i) A precise description of each major task to be undertaken, how it will be accomplished, and by whom it will be accomplished;

(ii) For each task, identify any "Other Entities," as defined in the Manual, that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of any subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(iii) For each task indicate the estimated total cost. Also indicate the estimated total months of effort, if any, allocated to the task from the applicant's staff.

(e) The sum of all tasks in paragraph (d)(4) of this section should equal the total estimated grant project cost.

(f) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also, indicate the number assigned full-time and the number assigned less than full-time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project. Indicate total personnel costs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[42 FR 19854, Apr. 15, 1977, as amended at 48 FR 29137, June 24, 1983]

§ 932.43 Approval of applications.

(a) An application for an interstate grant which complies with the policies and requirements of the Act and the guidance contained in this subpart may be approved by the Associate Administrator, assuming available funding.

(b) Should an application be found deficient, the Associate Administrator will notify the applicant in writing as to the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Associate Administrator may, upon finding extenuating circumstances relating to applications for interstate grants, waive appropriate administrative requirements contained herein.

§ 932.44 Amendments.

Amendments to an approved application must be submitted to and approved by the Associate Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Associate Administrator well in advance. While all amendments must be approved in writing by the NOAA Grants Officer, approval may be presumed for minor amendments if the grantee has not been notified of objections within 30 working days of date of postmark of the request.

PART 933—COASTAL ZONE MANAGEMENT RESEARCH AND TECHNICAL ASSISTANCE

Subpart A—General

Sec.
933.1 Basic purposes.
933.2 Definitions.

Subpart B—National Research and Technical Assistance Program

933.10 General.
933.11 Eligible entities and arrangements.
933.12 Use of funds.

Subpart C—Operation of National Research and Technical Assistance Program

933.20 Priorities and annual spending plans.
933.21 Funding arrangements.

Subpart D—State Grants for Research and Technical Assistance

933.30 General.
933.31 Eligible entities.
933.32 Use of funds.
933.33 Funding priorities.

Subpart E—Application for State Research and Technical Assistance Grants

933.40 General.
933.41 Applicant responsibility.
933.42 Application procedure.
933.43 Approval of applications.
933.44 Amendments.
933.45 Copies of products.

AUTHORITY: Sec. 310, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013), unless otherwise noted.

SOURCE: 42 FR 38738, July 29, 1977, unless otherwise noted.

Subpart A—General

§ 933.1 Basic purposes.

(a) This section sets forth the basic purposes for which the national research and technical assistance program, pursuant to subsection 310(a) of the Act, will be operated, and for which State research and technical assistance grants, pursuant to subsection 310(b) of the Act, will be awarded. The basic intent of both subsections is to fund research, study, and training which supports the development and administration of State coastal zone management programs. However, there is a significance difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone development or management agencies for the purpose of meeting State-specific research, study and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

(b) *Comment.* Statutory citation, subsection 310(a):

> The Secretary may conduct a program of research, study, and training to support the developent and implementation of management programs. * * * The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(c) *Comment.* Statutory citation, subsection 310(b):

> The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management.

§ 933.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act or 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration (NOAA), have been duly executed by Amendment 5 of Department of Commerce Organization Order 25-5A, dated October 13, 1976, and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76-82, effective October 13, 1976.

(c) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "person" is as defined in subsection 304(13) of the Act and means "any individual; any corporation, partnership, association, or other entity organized or existing under the laws or any state, regional, or local government; or any entity of any such Federal, State, regional, or local government."

Subpart B—National Research and Technical Assistance Program

§ 933.10 General.

(a) The national research and technical assistance program established pursuant to subsection 310(a) of the Act is a program utilizing contracts and other arrangements to support regional and national research, study, and training activities which assist State efforts to develop and/or administer coastal zone management programs.

(1) This program will be conducted so as to complement and support work being done by States using grants under section 305 or 306 of the Act.

(2) Research, study and training efforts will be expected to address the needs of a group of States, a region, or the entire nation or the national coastal zone management program.

(b) The national research and technical assistance program is differentiated from the interstate grant program, pursuant to section 309 of the Act, by the former's emphasis on technical research, study and training. The interstate program, by contract, focuses upon regional cooperation and coordination with particular attention directed toward the development of compatible coastal zone policies.

§ 933.11 Eligible entitles and arrangements.

(a) The Associate Administrator will enter into contracts or make other arrangements with any qualified person for the performance of work pursuant to subsection 310(a) of the Act.

(1) For purposes of this subsection, the term "other arrangements" includes both cost-reimbursable and non-reimbursable arrangements with other Federal agencies. Such arrangements shall include the use of the provisions of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648; Pub. L. 93-638) both for purposes of training and for providing technical assistance. Other arrangements may also include grants to State agencies or other units of government, or to educational or non-profit institutions.

(b) *Comment.* Statutory citation, subsection 310(a):

> Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency or instrumentality.

§ 933.12 Use of funds.

(a) Research and studies under subsection 310(a) shall include studies, pilot or demonstration projects, or other analyses complementing or enhancing development and/or administration of State coastal management programs, but with broader application than research and studies funded pursuant to subsection 310(b). The term "broader application" is intended to imply both a broader geographic coverage and a broader range of problems.

(1) Research and studies funded under subsection 310(a) can be expected to:

(i) Supplement and enhance work geared toward management program development and administration;

(ii) Aid in the resolution of coastal zone management issues;

(iii) Have application to a group of States, a region, or the entire nation;

(iv) Assist in resolving issues related to the administration of the national coastal zone management program; and

(v) Where appropriate, be transferable or usable beyond the study area.

(2) In contrast to State grants pursuant to subsection 310(b), these efforts will not necessarily focus on technical and site-specific studies.

(b) Training under subsection 310(a) shall include study, course-work, or other educational activities geared toward developing and/or improving the capabilities of individuals working in or preparing to work in the field of coastal zone management. Such training need not be limited solely to the short-term, professional skill development anticipated in subsection 310(b).

(1) Training activities funded under subsection 310(a) can be expected to:

(i) Improve the capabilities of personnel currently involved in coastal zone management work,

(ii) Provide for the development of additional trained coastal zone management personnel,

(iii) Contribute to improved understanding of the field of coastal zone management, or

(iv) Meet the needs of, or be transferable to, a group of States, a region, or the entire nation.

(2) Training may include, but need not be limited to, the following:

(i) Internships or other training programs designed to provide actual experience working in the field of coastal zone management;

(ii) Course or curriculum development and testing at the high school, college, and graduate school levels;

(iii) Testing of new approaches to education and training in coastal zone management; and

(iv) Exploration of the relationship of coastal zone management to other related fields.

Subpart C—Operation of National Research and Technical Assistance Program

§ 933.20 Priorities and annual spending plans.

(a) Periodically, the Associate Administrator will develop a priorities plan for the national research and technical assistance program.

(1) This plan will indicate those coastal zone management issues, subjects, and areas which the Associate Administrator believes should be the subject of research, study, and training over a specific period of time (usually three to five years). Relative priorities will be assigned to major subject areas contained in the plan.

(2) In order to be responsive to State, regional, and national coastal zone management issues and needs, and to avoid duplication of research being conducted by others, the priorities plan will be circulated for comment in draft form to coastal States, other Federal agencies and other interested parties engaged in related research and/or training.

(3) After considering these comments, the Associate Administrator will finalize the priorities plan and make it generally available.

(4) The priorities plan will be revised periodically by the Associate Administrator and updated as deemed appropriate, following circulation of such changes for review and comment.

(b) *Comment.* Statutory citation, subsection 310(c)(1):

> The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.

(c) Based upon the priorities plan, the Associate Administrator will develop an annual spending plan for subsection 310(a) which will indicate planned research and technical assistance activities for that fiscal year in more detail. Where possible, the spending plan will also indicate the means by which the Associate Administrator intends to accomplish such studies (i.e., by request for proposals, transfer of funds to other Federal agencies, grants, etc.) and the timing of such actions.

(1) A summary of the spending plan and the updated priorities plan will be made available to all interested parties upon request.

§ 933.21 Funding arrangements.

(a) To accomplish the national research and technical assistance program, the Associate Administrator may utilize any appropriate procedures which may include:

(1) Competitive procurement,

(2) Sole source procurement,

(3) Grants to State agencies or other units of government, or to educational or non-profit institutions,

(4) Cooperative agreements,

(5) Cost-reimbursement of other Federal agencies, and

(6) Personnel transfers on a reimbursable or non-reimbursable basis.

(b) Because of the variety of funding arrangements available to the Associate Administrator pursuant to subsection 310(a), the specific application procedures will vary depending on the nature of appropriate arrangements, and will be in accordance with prescribed procedures applicable to the Federal government or pursuant to Department of Commerce or NOAA administrative procedures.

Subpart D—State Grants for Research and Technical Assistance

§ 933.30 General.

(a) The State research and technical assistance program, pursuant to subsection 310(b) of the Act, is a program of grants to States to support research, study and training activities which improve State capability to develop and/or administer coastal zone management programs.

(1) Research, study and training grant applications should develop from needs identified or problems experienced during program development and/or administration.

(2) Applications should be justified in terms of the usefulness of the anticipated results to basic program efforts.

(b) Because of the highly applied nature of research conducted pursuant to subsection 310(b) of the Act, it may be difficult to judge whether an activity is most appropriately funded pursuant to subsection 310(b) or pursuant to sections 305 and 306 of the Act.

(1) Generally speaking, those activities which are essential to meeting the criteria for program approval or which are integral to operating an approved program should be funded pursuant to sections 305 and 306 of the Act.

(2) Those activities which enhance or improve a State's ability to meet the criteria for approval or to operate an approved program should be funded pursuant to subsection 310(b).

(3) It is anticipated that research and studies funded pursuant to section 310(b) will be more technical in nature or more geographically specific than those activities typically funded pursuant to sections 305 and 306 of the Act.

§ 933.31 Eligible entities.

To be eligible for grants pursuant to subsection 310(b), a State must either be making adequate progress toward the development of a coastal zone management program pursuant to section 305 of the Act or be operating an approved management program pursuant to section 306 of the Act.

§ 933.32 Use of funds.

(a) For purposes of subsection 310(b), research and studies shall include studies, pilot or demonstration projects, or other analyses of short term duration which can be expected to show results within one year's time. Such research or studies shall be derived from State coastal zone management program development and/or administration needs and shall utilize existing materials to the extent possible.

(1) Such research and studies will tend to focus more on technical and site-specific issues rather than on institutional and managerial issues.

(2) Research and studies related to the coastal energy impact program, established pursuant to section 308 of the Act, may be funded pursuant to subsection 310(b) of the Act if such research and studies are clearly related to a State's ongoing management program efforts and if such research and studies are not otherwise fundable

pursuant to sections 308, 305 or 306 of the Act.

(3) Research and studies related to or conducted within an estuarine sanctuary established pursuant to section 315(1) of the Act may be funded under subsection 310(b) if such research and studies can be shown to be related to program administration, and otherwise meet the criteria set forth in these regulations.

(b) For purposes of subsection 310(b), training shall refer to the education or other development of such personnel as may be needed to efficiently and effectively develop and/or administer State coastal zone management programs or to administer coastal energy impact funds.

(1) In general, such training should be of short term duration and should be directed toward the development of specific job-related skills.

(2) Such training may be for, but not limited to, the following types of expertise at both the State and local levels: permit reviewers and inspectors, law enforcement officers, natural resource managers, economists, fiscal officers, attorneys, planners, and persons with specialized training in the natural sciences.

(c) Grants issued pursuant to subsection 310(b) of the Act may not be used for the following purposes:

(1) Basic and/or long term research or education efforts;

(2) State management program administration activities;

(3) Construction;

(4) Land acquisition; or

(5) Permanent equipment acquisitions, unless such acquisitions can also be used for program development and/or administration purposes.

§ 933.33 Funding priorities.

(a) The Associate Administrator will not establish priorities between nor allocate funds specifically to research and study activities on the one hand or training activities on the other.

(b) Highest funding priority will be given to those research, study and/or training activities which directly support program development and/or administration.

(c) Lower funding priority will be given to the following:

(1) Activities which have a continuing funding dimension and a long time frame for completion; and

(2) Institutional and/or management studies more appropriately funded pursuant to sections 305 and 306 of the Act.

Subpart E—Application for State Research and Technical Assistance Grants

§ 933.40 General.

(a) The purpose of this section is to define the procedures by which grantees apply for and administer grants under the Act and to provide guidelines regarding the content of applications for State research and technical assistance grants pursuant to subsection 310(b) of the Act. These procedures shall be use and interpreted in conjunction with the Grants management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Applications for grants under subsection 310(b) of the Act will be accepted by the Associate Administrator at any time during the fiscal year provided that they contain the information required pursuant to § 933.42.

(c) States are encouraged to submit applications for grants under subsection 310(b) at the same time that they submit applications for grants under section 305 or 306 in order to enable the Associate Administrator to review more comprehensively State management program efforts and to expedite processing at both the State and Federal levels.

(d) States may submit more than one subsection 310(b) application per year if research or technical assistance needs arise that were not anticipated at the time of first application for subsection 310(b) funds.

(e) An application need not contain both research and training elements.

(f) Grants shall not exceed eighty percent of the total cost of the proposed research and/or training. Federal funds received from other sources cannot be used to match subsection 310(b) grants. Match provided by the applicant may consist of cash or in-kind services as provided in the Manual.

(g) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms "costs" and "grant project" pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(h) Grants shall be made for a maximum of one year's duration.

§ 933.41 Applicant responsibility.

(a) The application shall designate the entity to receive and administer grants pursuant to subsection 310(b). The applicant for such grants must be that entity designated by the Governor pursuant to 15 CFR 920.52 where a State is developing a coastal management program or that entity designated by the Governor pursuant to section 306(c)(5) of the Act where a coastal State is administering an approved management program. This entity may, in turn, pass through funds to, or subcontract with, other entities.

(b) The grantee will be administratively and fiscally responsible for all aspects of the grant, including any subcontracts made by the grantee.

§ 933.42 Application procedure.

(a) All applications are subject to the provisions of E.O. 12372.

(b) The Form SF-424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted sixty days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with requirement of E.O. 12372, including the resolution of any problems raised about the proposed project. The Associate Administrator will not accept applications that are substantially deficient in adherence to E.O. 12372 requirements.

(c) In Part IV, Program Narrative, of the Form SF—424, the applicant shall respond to the following requirements:

(1) A description of the work program to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major research or study task to be undertaken, including an explanation of the need for this task, how it will be accomplished, what existing material it builds on, what results are expected, and how these results will be used in the management program.

(ii) A precise description of each major training task to be undertaken, including an explanation of the need for this training, how it will be accomplished, what existing efforts it builds on, who will benefit from it, and how these benefits will relate to the management program.

(iii) For each task, identify any "Other Entities," as defined in the "Manual," that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of any subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s). Where all or part of the work is to be subcontracted, the extent and nature of grantee supervision should be indicated.

(iv) For each task indicate the estimated total cost. Also indicate the estimated total months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all tasks in paragraph (c)(1) of this section should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full-time and the number assigned less than full-time in the two categories. Additionally, indicate the number of new positions created in the two categories

as a result of the grant project. Indicate total personnel costs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[42 FR 38738, July 29, 1977, as amended at 48 FR 29137, June 24, 1983]

§ 933.43 Approval of applications.

(a) An application for a state research, study and/or training grant which complies with the policies and requirements of the Act and the guidance contained in this subpart shall be approved by the Associate Administrator, assuming available funding.

(b) Should an application be found deficient, the Associate Administrator will notify the applicant in writing as to the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Associate Administrator may, upon finding extenuating circumstances relating to an application for State research, study and/or training grant, waive appropriate administrative requirements contained herein.

§ 933.44 Amendments.

(a) Amendments to an approved application must be submitted to the Associate Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Associate Administrator well in advance. While all amendments must be approved in writing by the NOAA Grants Officer, approval may be presumed for minor amendments if the grantee has not been notified of objections within thirty (30) working days of the date of postmark of the request.

§ 933.45 Copies of products.

(a) In order to insure the ability of the Associate Administrator to make the results of research conducted pursuant to this subsection available to any interested person, grantees shall supply the Associate Administrator with five (5) copies of any products, reports, studies, etc. financed in whole or in part by subsection 310(b) monies. Such products shall be received by the Associate Administrator no later than three months after the expiration date of the grant.

(b) *Comment.* Statutory citation, subsection 310(c)(2):

The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

(1) At least one of the copies received by the Associate Administrator shall be transmitted to the National Technical Information Service for purposes of assuring general availability to interested parties.

PART 935—THE CHANNEL ISLANDS NATIONAL MARINE SANCTUARY REGULATIONS

Sec.
935.1 Authority.
935.2 Purpose.
935.3 Boundaries.
935.4 Definitions.
935.5 Allowed activities.
935.6 Hydrocarbon operations.
935.7 Prohibited activities.
935.8 Penalties for commission of prohibited acts.
935.9 Permit procedures and criteria.
935.10 Certification of other permits.
935.11 Appeals of administrative action.
APPENDIX 1A—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

AUTHORITY: 16 U.S.C. 1431-1434.

SOURCE: 45 FR 65203, Oct. 2, 1980, unless otherwise noted.

§ 935.1 Authority.

The Sanctuary has been designated pursuant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

§ 935.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the extraordinary ecosystem including marine birds and mammals and other natural resources of the waters surrounding the northern Channel Islands and Santa Barbara Island and ensure the continued availability of the area as a research and recreational resource. This area supports a particularly rich and diverse marine biota, partially because it is located in a transition zone between northern and southern waters and partially because it is one of very few areas off the Southern California coast that has been relatively unaltered by human use.

§ 935.3 Boundaries.

The Sanctuary consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock extending seaward to a distance of 6 nautical miles (nm). The coordinates are shown in Appendix 1A.

§ 935.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any state or local unit of government.

(d) "Islands" means San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

§ 935.5 Allowed activities.

All activities except those specifically prohibited by §§ 935.6 and 935.7 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority. Recreational use of the area is encouraged.

§ 935.6 Hydrocarbon operations.

(a) Hydrocarbon exploration, development and production pursuant to any lease executed prior to the effective date of these regulations and the laying of any pipeline is allowed subject to paragraph (b) of this section and to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(b) No person may engage in any hydrocarbon operation unless the following oil spill contingency equipment is available at the site of such operation:

(1) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(2) One oil skimming device capable of open ocean use; and

(3) Fifteen bales of oil sorbent material.

(c) Hydrocarbon exploration, development and production activities pursuant to leases executed on or after the effective date of these regulations are prohibited.

§ 935.7 Prohibited activities.

(a) Except as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 935.9. All prohibitions shall be applied consistently with international law.

(1) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials (bait);

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g. deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels;

(iii) Effluents incidental to hydrocarbon exploration and exploitation activities as allowed by § 935.6.

(2) *Alteration of, or construction on, the seabed.* Except in connection with the laying of any pipeline as allowed by § 935.6, within 2 nautical miles of any Island, no person shall:

(i) Construct any structure other than a navigation aid, or

(ii) Drill through the seabed, or

(iii) Dredge or otherwise alter the seabed in any way, other than

(A) To anchor vessels, or

(B) To bottom trawl from a commercial fishing vessel.

(3) *Commercial vessels operations.* Except to transport persons or supplies to or from an Island, no person shall operate within one nautical mile of an Island any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(4) *Disturbing marine mammals and birds.* No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of any Island except:

(i) For enforcement purposes;

(ii) To engage in keep bed surveys; or

(iii) To transport persons or supplies to or from an Island.

(5) *Removing or damaging historical or cultural resources.* No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impact shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 935.8 Penalities for commission of prohibited acts.

(a) Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Procedures are set out in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 935.9 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary prohibited under § 935.7 if such activity is either: (1) Research related to the resouces of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to:

Assistant Administrator for Coastal Zone Management
Attn: Sanctuary Programs Office, Division of Operations and Enforcement
National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, DC 20235.

An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as: (1) The general professional, and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information; (4) the end value of the activity and (5) such other matters as may be deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[45 FR 65203, Oct. 2, 1980, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 935.10 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 935.6 or § 935.7. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 935.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 935.9 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria set out in § 935.9(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Administrator will notifiy all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different) and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator will notify interested persons of the decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

[45 FR 65203, Oct. 2, 1980, as amended at 49 FR 1041, Jan. 6, 1984]

APPENDIX IA—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
Northern Channel Islands Section		
01	33°56'28.959"	119°16'23.800"
02	33°58'03.919"	119°14'56.964"
03	34°01'33.846"	119°14'07.740"
04	34°04'24.203"	119°15'21.308"
05	34°06'06.653"	119°17'27.002"
06	34°06'54.809"	119°19'46.046"
07	34°06'57.988"	119°23'24.905"
08	34°06'51.627"	119°24'04.198"
09	34°07'01.640"	119°25'40.819"
10	34°06'59.904"	119°26'50.959"
11	34°08'02.002"	119°28'47.501"
12	34°08'17.693"	119°29'27.698"
13	34°08'52.234"	119°30'39.562"
14	34°09'16.780"	119°35'22.667"
15	34°09'05.106"	119°36'41.694"
16	34°08'02.782"	119°39'33.421"
17	34°08'46.870"	119°41'48.621"
18	34°09'35.563"	119°45'57.284"
19	34°09'32.627"	119°46'37.335"
20	34°09'33.396"	119°47'32.285"
21	34°09'43.668"	119°48'09.018"
22	34°10'10.616"	119°50'07.659"
23	34°10'21.586"	119°51'05.146"
24	34°10'33.161"	119°53'17.044"
25	34°10'36.545"	119°55'57.373"
26	34°10'21.283"	119°57'26.403"
27	34°08'07.255"	120°01'07.233"
28	34°08'13.144"	120°02'27.930"
29	34°07'47.772"	120°05'05.449"
30	34°07'29.314"	120°06'36.262"
31	34°07'30.691"	120°09'35.238"
32	34°06'36.285"	120°12'39.335"
33	34°06'40.634"	120°13'33.940"
34	34°08'10.759"	120°15'07.017"
35	34°09'12.290"	120°17'07.046"
35A	34°09'50.706"	120°17'31.649"
36	34°10'56.346"	120°18'40.520"
36B	34°11'26.249"	120°19'29.213"
37	34°12'06.078"	120°21'00.835"
37C	34°12'25.468"	120°25'01.261"
38	34°12'18.754"	120°25'39.373"
38D	34°11'33.184"	120°27'33.921"
39	34°12'19.470"	120°30'22.620"
39E	34°12'17.540"	120°32'19.959"
40	34°10'54.592"	120°35'57.887"
40F	34°06'07.491"	120°38'27.883"
41	34°04'53.454"	120°38'16.602"
41G	34°03'30.539"	120°37'39.442"
42	34°01'09.860"	120°35'04.808"
42H	34°00'48.573"	120°34'25.106"
43	33°59'13.122"	120°33'53.385"
44	33°57'01.427"	120°31'54.590"
45	33°55'36.973"	120°27'37.188"
46	33°55'30.037"	120°25'14.587"
47	33°54'50.522"	120°22'29.536"
48	33°55'01.640"	120°19'26.722"
49	33°54'34.409"	120°18'27.344"
50	33°53'23.129"	120°17'39.927"
51	33°50'39.990"	120°15'13.874"
52	33°49'53.260"	120°13'41.904"
53	33°49'03.437"	120°12'06.750"
54	33°48'36.087"	120°11'10.821"
55	33°47'39.280"	120°07'59.707"
56	33°47'37.617"	120°06'04.002"
57	33°47'59.351"	120°04'08.370"
58	33°48'38.700"	120°02'33.188"
59	33°48'52.167"	120°01'50.244"
60	33°50'28.486"	119°57'50.820"

APPENDIX IA—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY—Continued

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
61	33°50′55.128″	119°55′19.934″
62	33°52′13.338″	119°52′53.439″
63	33°52′04.900″	119°52′10.719″
64	33°51′39.919″	119°47′21.152″
65	33°51′48.592″	119°46′13.213″
66	33°51′35.798″	119°44′34.589″
67	33°51′44.374″	119°41′12.738″
68	33°52′23.857″	119°39′14.708″
69	33°53′09.365″	119°37′30.784″
70	33°53′12.754″	119°35′35.793″
71	33°53′17.114″	119°34′54.567″
72	33°53′38.865″	119°32′51.578″
73	33°54′02.277″	119°31′06.274″
74	33°54′56.444″	119°28′54.052″
75	33°54′39.349″	119°27′37.512″
76	33°54′15.236″	119°25′23.779″
77	33°54′07.847″	119°24′22.849″
78	33°54′04.682″	119°22′58.006″
79	33°54′14.311″	119°21′44.573″
80	33°54′22.824″	119°21′09.003″
81	33°54′46.904″	119°19′54.677″
82	33°55′05.834″	119°19′16.027″
Santa Barbara Island Section		
83	33°28′56.904″	119°10′04.092″
84	33°26′32.364″	119°10′01.328″
85	33°24′19.904″	119°08′52.236″
86	33°23′26.019″	119°07′54.826″
87	33°22′04.836″	119°05′16.716″
88	33°21′49.387″	119°04′01.551″
89	33°21′44.594″	119°02′49.887″
90	33°21′49.556″	119°01′37.839″
91	33°22′07.538″	118°59′49.357″
92	33°22′27.774″	118°58′51.623″
93	33°22′47.957″	118°58′07.633″
94	33°23′20.805″	118°57′14.375″
95	33°24′18.458″	118°56′08.450″
96	33°26′24.130″	118°54′51.352″
97	33°29′02.820″	118°54′22.276″
98	33°31′27.917″	118°54′50.367″
99	33°32′17.935″	118°55′18.396″
100	33°35′10.090″	118°59′40.091″
101	33°35′24.675″	119°01′22.108″
102	33°35′06.497″	119°03′59.463″
103	33°34′48.322″	119°05′03.374″
104	33°32′37.151″	119°08′37.201″
105	33°30′41.731″	119°09′45.845″

[47 FR 5212, Feb. 4, 1982]

PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

Sec.
936.1 Authority.
936.2 Purpose.
936.3 Boundaries.
936.4 Definitions.
936.5 Allowed activities.
936.6 Prohibited activities.
936.7 Penalties for commission of prohibited acts.
936.8 Permit procedures and criteria.
936.9 Certification of other permits.
936.10 Appeals of administrative action.
APPENDIX I—POINT REYES-FARALLON ISLANDS NATIONAL MARINE SANCTUARY

AUTHORITY: Secs. 302(d), (f), (g), and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434. Secs. 302(f), 302(g) and 303, Act.

SOURCE: 46 FR 7939, Jan. 26, 1981, unless otherwise noted.

§ 936.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§ 936.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.

§ 936.3 Boundaries.

The Sanctuary consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (nmi^2). The coordinates are listed in Appendix I. The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 nmi beyond State waters. The Sanctuary also includes the waters within 12 nmi of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 936.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Areas of Special Biological Significance" (ASBS) means those areas established by the State of California prior to the designation of the sanctuary except that for purposes of these regulations, the area established around the Farallon Islands shall not be included.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(d) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government or any State or local unit of government.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

§ 936.5 Allowed activities.

All activities except those specifically prohibited by § 936.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority. Recreational use of the area is encouraged.

§ 936.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 936.8 or § 936.9. All prohibitions shall be applied consistently with international law.

(1) *Hydrocarbon operations.* Hydrocarbon exploration, development, and production are prohibited except that pipelines related to operations outside the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance where certified to have no significant effect on sanctuary resources in accordance with § 936.9.

(2) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 nmi south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 936.9.

(3) *Alteration of or construction on the seabed.* Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 936.9, no person shall:

(i) Construct any structure other than a navigation aid,

(ii) Drill through the seabed, and

(iii) Dredge or otherwise alter the seabed in any way other than by anchoring vessels or botton trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) *Operations of vessels.* Except to transport persons or supplies to or from islands or mainland areas adjacent to sanctuary waters, within an area extending 2 nautical miles from the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance, no person shall operate any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) *Disturbing marine mammals and birds.* No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) *Removing or damaging historical or cultural resources.* No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 936.7 Penalties for commission of prohibited acts.

(a) Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 936.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary, prohibited under § 936.6, if such an activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Coastal Zone Management, Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7939, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 936.9 Certification of other permits.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 936.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance, or the disposal of dredge material at the interim dumpsite now established approximately 10 nmi south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition certification within 60 days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 936.10.

§ 936.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 936.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated hearing officer after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing must normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and other interested persons (at the discretion of the hearing officer) may appear personally or by counsel at the hearing, and submit material and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the appellant or applicant stating the reason(s) for the extension.

[46 FR 7939, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

APPENDIX I—POINT REYES-FARALLON ISLANDS NATIONAL MARINE SANCTUARY

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
1	38°15'50.349"	123°10'48.933"
2	38°12'36.338"	123°07'04.846"
3	38°09'57.033"	123°05'27.435"
4	38°08'26.872"	123°04'52.524"
5	38°07'42.125"	123°05'10.714"
6	38°06'06.017"	123°05'48.920"
7	38°05'26.765"	123°06'09.922"
8	38°04'44.567"	123°06'29.251"
9	38°03'54.439"	123°06'57.591"
10	38°03'07.527"	123°07'37.755"
11	37°59'32.425"	123°08'24.905"
12	37°59'22.344"	123°14'06.127"
13	37°57'31.931"	123°19'19.187"
14	37°54'16.943"	123°23'18.456"
15	37°50'05.522"	123°25'28.791"
16	37°45'33.799"	123°25'32.666"
17	37°41'20.351"	123°23'29.811"
18	37°38'01.053"	123°19'37.445"
19	37°36'04.665"	123°14'30.483"
20	37°35'30.191"	123°13'31.060"
21	37°33'47.197"	123°11'50.904"
22	37°31'12.270"	123°07'39.618"
23	37°30'29.706"	123°05'42.221"
24	37°29'39.287"	123°00'23.711"
25	37°30'34.337"	122°54'18.139"
26	37°31'47.784"	122°51'31.592"
27	37°34'17.533"	122°48'10.415"
28	37°36'58.627"	122°46'05.779"
29	37°39'59.303"	122°44'59.838"
30	37°52'56.355"	122°37'35.195"

[47 FR 5212, Feb. 4, 1982]

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

Sec.
937.1 Authority.
937.2 Purpose.
937.3 Boundaries.
937.4 Definitions.
937.5 Allowed activities.
937.6 Activities prohibited without a permit.
937.7 Penalties for commission of prohibited acts.
937.8 Permit procedures and criteria.
937.9 Other permits.
937.10 Appeals from administrative action.

AUTHORITY: Secs. 302(f), 302(g), 303, Pub. L. 92-532, 86 Stat. 1061, 1062 (16 U.S.C. 1431-1434).

SOURCE: 46 FR 7949, Jan. 26, 1981, unless otherwise noted.

§ 937.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§ 937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the coral reef ecosystem and other natural resources of the waters at Looe Key and to ensure the continued availability of the area for public educational purposes and as a commercial, ecological, research and recreational resource. This area supports a particularly rich and diverse marine biota. The area is easily accessible to the lower Florida Keys and is widely used by boaters, charter boat operators, dive boats, recreational divers and fishermen. Consequently, both present and potential levels of use may result in harm to Looe Key in the absence of long-term planning, research, monitoring and adquate protection.

§ 937.3 Boundaries.

The Sanctuary consists of an area of 5.32 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles (12.5 km) southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida reef tract at Looe Key. The precise boundaries are:

LATITUDE AND LONGITUDE ARE FURNISHED TO .001 OF A SECOND

Pt. No.	Latitude	Longitude
2-1	24°31′37″	81°26′00″
2-2	24°33′34″	81°26′00″
2-3	24°34′09″	81°23′00″
2-4	24°32′12″	81°23′00″

§ 937.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Admistrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State or local unit of the government.

(d) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with the coral.

(e) "The Fore Reef" means the area of the well defined "spur and groove" coral reef as delineated by Loran readings 1, 2, 3, 4 as follows:

1. NW 7980-W-13973.7, 7980-Y-43532.7
2. SW 7980-W-13975.4, 7980-Y-43543.4
3. NE 7980-W-13975.0, 7980-Y-43530.1
4. SE 7980-W-13975.4, 7980-Y-43527.7

§ 937.5 Allowed activities.

All activities except those specifically prohibited by § 937.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority.

§ 937.6 Activities prohibited without a permit.

(a) Unless permitted by the Assistant Administrator in accordance with § 937.8, or as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary. All prohibitions must be applied consistently with international law.

(1) *Removing or damaging distinctive natural features.* (i) No person shall break, cut or similarly damage or take any coral or marine invertebrate except as an incidental result of anchoring outside the Fore Reef where sand anchoring is encouraged but not required. Divers are prohibited from

handling coral or standing on coral formations.

(ii) No person shall take, except incidentally to allowed fishing activities, any tropical fish or marine invertebrate.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no sanctuary. The following constraints also shall be imposed.

(i) No person shall place any anchor on coral within the Fore Reef of the Sanctuary nor allow any chain or rope to enter the Fore Reef in a way that injures any coral. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(ii) Watercraft must use mooring buoys, stations or anchoring areas when such facilities and areas have been designated and are available.

(iii) Watercraft shall not be operated in such a manner as to strike or otherwise cause damage to the natural features of the Sanctuary.

(iv) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner, the red and white "divers down" flag.

(3) *Using harmful fishing methods.* (i) No person shall use or place wire fish traps within the Sanctuary.

(ii) No person shall place lobster traps within the Fore Reef area of the Sanctuary.

(iii) No person shall use pole spears, Hawaiian slings, rubber-powered arbalets, pneumatic and spring loaded guns or similar devices known as spearguns within the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives or similar methods within the Sanctuary.

(4) *Removing or damaging distinctive historical or cultural resources.* No person shall remove, damage or tamper with any historical or cultural resources, including cargo pertaining to submerged wrecks.

(5) *Discharges.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials.

(ii) Cooling water from vessels.

(iii) Effluents from marine sanitation devices.

(6) *Markers.* (i) No person shall mark, deface or damage in any way or displace, remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts or other boundary markers installed by the managers or markers placed for the purpose of lobster pot fishing.

(ii) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(iii) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 937.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 937.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 937.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, ATTN: Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general profession and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreational, educational or scientific information; (4) the end value of the activity; and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section the Assistant Administrator shall seek the views of the Fishery Management Councils and may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public.

(f) The permit granted under paragraph (e) of this section may not be transferred without written permission of the Assistant Administrator.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 937.9 Other permits.

All permits, licenses and other authorizations issued pursuant to any other authority remain valid if they do not authorize any activity prohibited by § 937.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 937.10 Appeals from administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The

Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator shall notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set in § 937.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefor in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different) and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

Sec.

938.1 Authority.
938.2 Purpose.
938.3 Boundaries.
938.4 Definitions.
938.5 Allowed activities.
938.6 Prohibited activities.
938.7 Penalties for commission of prohibited acts.
938.8 Permit procedures and critieria.
938.9 Certification of other permits.
938.10 Appeals of administrative action.

AUTHORITY: Secs. 302(a), (f), (g) and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

SOURCE: 46 FR 7944, Jan. 26, 1981, unless otherwise noted.

§ 938.1 Authority.

The Sanctuary has been designated pursuant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§ 938.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the live bottom ecosystem and other natural resources of the waters of Gray's Reef and to ensure the continued availability of the area as an ecological, research, and recreational resource.

§ 938.3 Boundaries.

The sanctuary consists of 16.68 square nautical miles of high sea waters off the coast of Georgia. The sanctuary boundary includes all waters within a rectangle starting at coordinate 31° 21′ 45″ N, 80° 55′ 17″ W, commencing to coordinate 31° 25′ 15″ N, 80° 55′ 17″ W, thence to coordinate 31° 25′ 15″ N, 80° 49′ 42″ W, thence to coordinate 31° 21′ 45″ N, 80° 49′ 42″ W, thence back to the point of origin.

§ 938.4 Definitions.

(a) "Administrator" refers to the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" refers to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" is any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government or any State or local unit of government.

§ 938.5 Allowed activities.

All activities except those specifically prohibited by § 938.6 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority.

§ 938.6 Prohibited activities.

(a) Except as may be necessary for national defense in accordance with Article 5, Section 2 of the Designation or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 938.8. All prohibitions will be applied consistently with international law.

(1) *Alteration of or construction on the seabed.* No person shall dredge, drill, or otherwise alter the seabed in any way nor construct any structure other than a navigation aid without a permit.

(2) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no Sanctuary.

(4) *Wire trap fishing.* No person shall use, place, or possess wire fish traps within the Sanctuary without a permit.

(5) *Bottom trawling and specimen dredging.* No person shall use a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device within the Sanctuary without a permit.

(6) *Marine specimen collecting.* (i) No person shall break, cut, or similarly damage, take, or remove any bottom formation, any marine invertebrate, or any marine plant without a permit.

(ii) No person shall take without a permit any tropical fish, which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes, and which lives in a direct relationship with the live bottom community.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives, or similar methods to take any marine animal or plant.

(7) *Removing or damaging historic or cultural resources.* No person shall tamper with, damage, or remove any historic or cultural resources without a permit.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized priniciples of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 938.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation.

§ 938.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 938.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Sanctuary Programs, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7944, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 938.9 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 938.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) The Assistant Administrator may amend, suspend, or revoke the certification made under this section whenever continued operation would violate any term or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken. Either the permit holder or the issuing agency may appeal the action as provided for in § 938.10.

§ 938.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 938.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 938.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, the hearing office's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated hearing officer after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing must normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different) and other interested persons (at the discretion of the hearing officer) may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action will constitute final action for the Agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the appellant or applicant stating the reason(s) for the extension.

[46 FR 7944, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—GENERAL REGULATIONS OF THE NATIONAL WEATHER SERVICE

PART 945—RULES FOR GUIDANCE OF THE PUBLIC

Sec.
945.1 Connections to weather communications systems.
945.2 Time of release of weather information affecting crops.
945.3 False weather reports.
945.4 Certified data for use in court.
945.5 Appearance in court of weather bureau employees.
945.6 Agreements for radio and television weather broadcasts.

AUTHORITY: Sec. 3, 26 Stat. 653; 15 U.S.C. 313.

SOURCE: 32 FR 16258, Nov. 29, 1967; 35 FR 19249, Dec. 19, 1970, unless otherwise noted.

§ 945.1 Connections to weather communications systems.

The National Weather Service uses a number of federally operated weather communications systems in support of its internal operations. Connections to these circuits, for receiving purposes only, are permitted to be made by qualified organizations or individuals. Application to connect to these circuits should be made to the Director, National Weather Service, Silver Spring, Md. 20910.

§ 945.2 Time of release of weather information affecting crops.

(a) Bulletins or radio broadcasts giving agricultural weather information are released at 10 a.m. each workday during the growing season in the affected areas.

(b) Weekly Weather and Crop Bulletins containing a synopsis of weather conditions and their effect on crops and farming operations (which show snow and ice conditions during the season) are released simultaneously at Washington, D.C., and approximately 45 field stations at 12 noon e.s.t., on Tuesday, or on Wednesday if Monday or Tuesday is a holiday.

(c) Because of the influence that might be exerted upon the market value of the products of the soil by the information contained in the weather and crop bulletins, the law provides a fine of $10,000 or imprisonment of 10 years, or both, for any responsible Government official who wilfully imparts any information of speculative value contained in the bulletins before the times of release to the public (18 U.S.C. 1902).

§ 945.3 False weather reports.

Whoever knowingly issues or publishes any counterfeit forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the National Weather Service * * * shall be fined not more than $500, or imprisoned not more than 90 days, or both (18 U.S.C. 2074).

§ 945.4 Certified data for use in court.

(a) 28 U.S.C. 1733 provides that authenticated copies of any books, records, papers, or other documents in any of the executive departments shall be admitted in evidence in courts of law equally with the originals thereof.

(b) All field stations and the Washington office are prepared to furnish applicants with duly certified copies of original or published weather records that are necessary for legal purposes, upon payment of appropriate fees to recover the reproduction, certification, and other related costs.

§ 945.5 Appearance in court of weather bureau employees.

In all cases of private litigation where it is required that an employee produce records or testify, it is necessary that he be duly subpoenaed to appear in court as an official of the Service. As the Federal government will be deprived of his services while so testifying, the employee will collect the authorized witness fees and allowances for expenses of travel and subsistence, all of which he is required to account for to the Service. Arrangements should be made with the court to set a time for the appearance of an employee that will not interfere with important duties that would result in injury to interests of the community by delay in issuing important weather forecasts and danger warnings (15 Comp. Gen. 196).

§ 945.6 Agreements for radio and television weather broadcasts.

(a) Radio stations often desire to make special arrangements for the broadcast of daily weather forecasts, special warnings, and other weather information under commercial sponsorship. In such cases the National Weather Service obtains an agreement setting forth conditions under which the broadcasts are to be made. This agreement specifies the regular time schedules of the broadcast; that the information be given exactly as issued by the Service; that while it is permissible to announce immediately before and at the conclusion of the weather broadcast that it is furnished by the courtesy of a sponsor, care must be exercised to avoid the implication that the forecasts are made or paid for by the advertiser; and that there shall be nothing in the announcement associated with weather broadcasts to indicate that the National Weather Service or the Government endorses the sponsor or the product advertised.

(b) An agreement is also required between the National Weather Service and any radio or television station that wishes to install equipment or make other arrangements for direct broadcasts from a National Weather Service office.

(c) No charge is made to the radio or television stations or the sponsor for weather information intended for public distribution. However, if there are communication tolls or leased wire charges in connection with the delivery of such information to the radio or television stations, such charges are borne by the radio or television stations or the sponsor.

SUBCHAPTER D—GENERAL REGULATIONS OF THE ENVIRONMENTAL DATA SERVICE

PART 950—ENVIRONMENTAL DATA AND INFORMATION

Sec.

950.1 Scope and purpose.
950.2 Environmental Data and Information Service (EDIS).
950.3 National Climatic Center (NCC).
950.4 National Oceanographic Data Center (NODC).
950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).
950.6 Environmental Science Information Center (ESIC).
950.7 Center for Environmental Assessment Services (CEAS).
950.8 Satellite Data Services Division (SDSD).
950.9 Computerized Environmental Data and Information Retrieval Service.

AUTHORITY: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

SOURCE: 44 FR 54468, Sept. 20, 1979, unless otherwise noted.

§ 950.1 Scope and purpose.

This part describes the Environmental Data and Information Service (EDIS), a major program element of the National Oceanic and Atmospheric Administration, and EDIS management of environmental data and information.

§ 950.2 Environmental Data and Information Service (EDIS).

The Environmental Data and Information Service is the first Federal organization created specifically to manage environmental data and information. EDIS acquires, processes, archives, analyzes, and disseminates worldwide environmental (atmospheric, marine, solar, and solid Earth) data and information for use by commerce, industry, the scientific and engineering communities, and the general public, as well as by Federal, State, and local governments. It also provides experiment design and data management support to large-scale environmental experiments; assesses the impact of environmental fluctuations on food production, energy production and consumption, environmental quality, and other economic systems; and manages or provides functional guidance for NOAA's scientific and technical publication and library activities. In addition, EDIS operates related World Data Center-A subcenters and participates in other international data and information exchange programs. To carry out this mission, EDIS operates a network of specialized service centers and a computerized environmental data and information retrieval service.

§ 950.3 National Climatic Center (NCC).

The National Climatic Center acquires, processes, archives, analyzes, and disseminates climatological data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center-A (Meteorology). It is the collection center and custodian of all United States weather records, the largest of the EDIS centers, and the largest climatic center in the world.

(a) Climatic data available from NCC include:

(1) Hourly Surface Observations from Land Stations (ceiling, sky cover, visibility, precipitation or other weather phenomena, obstructions to vision, pressure, temperature, dew point, wind direction, wind speed, gustiness).

(2) Three-Hourly and Six-Hourly Surface Observations from Land Stations, Ocean Weather Stations, and Moving Ships (variable data content).

(3) Upper Air Observations (radiosondes, rawinsondes, rocketsondes, low-level soundings, pilot balloon winds, aircraft reports).

(4) Radar Observations (radar log sheets, radar scope photography).

(5) Selected Maps and Charts (National Meteorological Center products).

(6) Derived and Summary Data (grid points, computer tabulations, digital summary data).

(7) Special Collections (Barbados Oceanographic and Meteorological Experiment meteorological data, Global Atmospheric Research Program basic

data set, solar radiation data, many others).

(b) Queries should be addressed to: National Climatic Center, National Oceanic and Atmospheric Administration, Asheville, NC 28801, tel. 704-258-2850, Ext. 683.

§ 950.4 National Oceanographic Data Center (NODC).

The National Oceanographic Data Center acquires, processes, archives, analyzes, and disseminates oceanographic data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center-A (Oceanography). It was the first NODC established and houses the world's largest usuable collection of marine data.

(a) Oceanographic data available from NODC include:

(1) Mechanical and expendable bathytheremograph data in analog and digital form.

(2) Oceanographic station data for surface and serial depths, giving values of temperature, salinity, oxygen, inorganic phosphate, total phosphorus, nitrite-nitrogen, nitrate-nitrogen, silicate-silicon, and pH.

(3) Continuously recorded salinity-temperature-depth data in digital form.

(4) Surface current information obtained by using drift bottle or calculated from ship set and drift.

(5) Biological data, giving values of plankton standing crop, chlorophyll concentrations, and rates of primary productivity.

(6) Other marine environmental data obtained by diverse techniques, e.g., instrumented buoy data, and current meter data.

(b) Queries should be addressed to: National Oceanographic Data Center, National Oceanic and Atmospheric Administration, Washington, DC 20235, tel. 202-634-7500.

§ 950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).

The National Geophysical and Solar-Terrestrial Data Center acquires, processes, archives, analyzes, and disseminates solid Earth and marine geophysical data as well as ionospheric, solar, and other space environment data; develops analytical, climatological, and descriptive products to meet user requirements; and provides facilities for World Data Center-A (Solid-Earth Geophysics, Solar Terrestrial Physics, and Glaciology).

(a) Geophysical and solar-terrestrial data available from NGSDC include:

(1) *Marine geology and geophysics.* Bathymetric measurement; seismic reflection profiles; gravimetric measurements; geomagnetic total field measurements; and geological data, including data on heat flow, cores, samples, and sediments.

(2) *Solar-Terrestrial physics.* Ionosphere data, including ionograms, frequency plots, riometer and field-strength strip charts, and tabulations; solar activity data; geomagnetic variation data, including magnetograms; auroral data; cosmic ray data; and airglow data.

(3) *Seismology.* Seismograms; accelerograms; digitized strong-motion accelerograms; earthquake data list (events since January 1900); earthquake data service with updates on a monthly basis.

(4) *Geomagnetic main field.* Magnetic survey data and secular-change data tables.

(b) Queries should be addressed to: National Geophysical and Solar-Terrestrial Data Center, National Oceanic and Atmospheric Administration, Boulder, CO 80303, tel. 303-499-1000, ext. 6215.

§ 950.6 Environmental Science Information Center (ESIC).

ESIC is NOAA's information specialist, librarian, and publisher. ESIC coordinates NOAA's library and information services and its participation in the national network of scientific information centers and libraries. Computerized literature searches provide information from over 80 data bases. The complete list of data bases is available on request. All ESIC information facilities provide the normal library tailored information and reference services. As NOAA's publisher of scientific and technical information, ESIC reviews, edits, and processes NOAA manuscripts for publication.

(a) Services available from ESIC include:

(1) *Reference services.* Some services are provided on a cost-recovery basis to non-NOAA individuals.

(2) *Publication copy services.* Copies of NOAA publications are provided on request from qualified users, including governments, universities, non-profit organizations, professional societies, chambers of commerce, public information media, and individuals and organizations having cooperative or exchange agreements with NOAA.

(3) *Bibliographies.* Special bibliographies are prepared on request. When provided to non-NOAA individuals, service is on a full cost-recovery basis.

(4) *Current awareness services.* Periodically provides announcements of titles of newly published NOAA scientific and technical publications.

(5) *Lending services.* Materials are loaned to other libraries and to NOAA employees.

(6) On-site use of library collections.

(7) *Publishing services.* Includes providing refereeing, reviewing, editing, and publishing services for NOAA authors of manuscripts destined for both NOAA and non-NOAA publication series.

(b) Queries should be addressed to: Environmental Science Information Center, National Oceanic and Atmospheric Administration, Rockville, MD 20852, tel. 301-443-8137.

§ 950.7 Center for Environmental Assessment Services (CEAS).

EDIS assists National decisionmakers in solving problems by providing data analyses, applications, assessments, and interpretations to meet their particular requirements. Many of these services are provided by the EDIS Center for Environmental Assessment Services (CEAS).

(a) The following are examples of CEAS projects and services:

(1) CEAS prepares data-based studies and weekly assessments of potential effects of climatic fluctuations on National and global grain production.

(2) CEAS provides environmental analyses and assessments to support efficient and effective planning, site selection, design, construction, and operation of supertanker ports and offshore drilling rigs. Such planning depends heavily upon environmental assessments.

(3) During the heating season, CEAS issues monthly and seasonal projections of natural gas demand for multi-State regions of the conterminous United States. Similar projections are made for electricity during the cooling season.

(4) CEAS has developed and makes available when needed a statistical oil spill trajectory risk model based on historical meteorological and oceanographic data.

(5) The center has analyzed the potential ecological effects of the planned disposal of huge volumes of saturated brine into Gulf waters for the National Strategic Petroleum Reserve and may be called on to provide similar services in other subject areas.

(6) CEAS provides experiment design, data analysis, and data management support to project managers and produces merged, validated multidisciplinary data sets for international and national study (such undertakings as the recent key role in the Global Atmospheric Research Program (GARP) experiments).

(7) CEAS provides special data or information as required. Currently the Center is assembling an inventory of cruises and a global oceanographic data base from observations taken during the First GARP Global Experiment (FGGE).

(b) Additional information on these or related services can be obtained by writing: Director, Center for Environmental Assessment Services, National Oceanic and Atmospheric Administration, Washington, DC 20235; or by calling (202) 634-7251.

§ 950.8 Satellite Data Services Division (SDSD).

The Satellite Data Services Division of the EDIS National Climatic Center provides environmental and earth resources satellite data to other users once the original collection purposes (i.e., weather forecasting) have been satisfied. The division also provides photographs collected during NASA's SKYLAB missions.

(a) Satellite data available from SDSD include:

(1) Data from the TIROS (Television InfraRed Observational Satellite) series of experimental spacecraft; much of the imagery gathered by spacecraft of the NASA experimental NIMBUS series; full-earth disc photographs from NASA's Applications Technology Satellites (ATS) I and III geostationary research spacecraft; tens of thousands of images from the original ESSA and current NOAA series of Improved TIROS Operational Satellites; and both full-disc and sectorized images from the Synchronous Meteorological Satellites (SMS) 1 and 2, the current operational geostationary spacecraft. In addition to visible light imagery, infrared data are available from the NIMBUS, NOAA, and SMS satellites. Each day, SDSD receives about 239 negatives from the polar-orbiting NOAA spacecraft, more than 235 SMS-1 and 2 negatives, and several special negatives and movie film loops.

(2) Photographs (both color and black-and-white) taken during the three SKYLAB missions (May through June, 1973, July through September, 1973, and November 1973 through February 1974).

(b) Queries should be addressed to: Satellite Data Services Division, World Weather Building, Room 606, Washington, DC 20233, tel. 301-763-8111.

§ 950.9 Computerized Environmental Data and Information Retrieval Service.

The Environmental Data Index (ENDEX) provides rapid, automated referral to multidiscipline environmental data files of NOAA, other Federal agencies, state and local governments, and universities, research institutes, and private industry. A computerized, information retrieval service provides a parallel subject-author-abstract referral service. A telephone call to any EDIS data or information center or NOAA library will allow a user access to these services.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

Subpart A—General

Sec.

970.100 Purpose.
970.101 Definitions.
970.102 Nature of licenses.
970.103 Prohibited activities and restrictions.

Subpart B—Applications

970.200 General.

CONTENTS

970.201 Statement of financial resources.
970.202 Statement of technological experience and capabilities.
970.203 Exploration plan.
970.204 Environmental and use conflict analysis.
970.205 Vessel safety.
970.206 Statement of ownership.
970.207 Antitrust information.
970.208 Fee.

PROCEDURES

970.209 Substantial compliance with application requirements.
970.210 Reasonable time for full compliance.
970.211 Consultation and cooperation with Federal agencies.
970.212 Public notice, hearing and comment.
970.213 Amendment to an application.

Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980; Resolution of Conflicts Among Overlapping Applications; Applications by New Entrants

970.300 Purposes and definitions.
970.301 Requirements for applications based on pre-enactment exploration.
970.302 Procedures and criteria for resolving conflicts.
970.303 Procedures for new entrants.
970.304 Action on portions of applications or amendments not in conflict.

Subpart D—Certification of Applications

970.400 General.
970.401 Financial responsibility.
970.402 Technological capability.
970.403 Previous license and permit obligations.
970.404 Adequate exploration plan.

Sec.
970.405 Appropriate exploration site size and location.
970.406 Fee payment.
970.407 Denial of certification.
970.408 Notice of certification.

Subpart E—Issuance/Transfer/Terms, Conditions and Restrictions

970.500 General.

ISSUANCE/TRANSFER; MODIFICATION/REVISION; SUSPENSION/REVOCATION

970.501 Proposal to issue or transfer and of terms, conditions and restrictions.
970.502 Consultation and cooperation with Federal agencies.
970.503 Freedom of the high seas.
970.504 International obligations of the United States.
970.505 Breach of international peace and security involving armed conflict.
970.506 Environmental effects.
970.507 Safety at sea.
970.508 Denial of issuance or transfer.
970.509 Notice of issuance or transfer.
970.510 Objections to terms, conditions and restrictions.
970.511 Suspension or modification of activities; suspension or revocation of licenses.
970.512 Modification of terms, conditions and restrictions.
970.513 Revision of a license.
970.514 Scale requiring application procedures.
970.515 Duration of a license.
970.516 Approval of license transfers.

TERMS, CONDITIONS, AND RESTRICTIONS

970.517 Diligence requirements.
970.518 Environmental protection requirements.
970.519 Resource conservation requirements.
970.520 Freedom of the high seas requirements.
970.521 Safety at sea requirements.
970.522 Monitoring requirements.
970.523 Special terms, conditions, and restrictions.
970.524 Other Federal requirements.

Subpart F—Resource Development Concepts

970.600 General.
970.601 Logical mining unit.
970.602 Diligent exploration.
970.603 Conservation of resources.

Subpart G—Environmental Effects

970.700 General.
970.701 Significant adverse environmental effects.

Sec.
970.702 Monitoring and mitigation of environmental effects.

Subpart H—Safety of Life and Property at Sea

970.800 General.
970.801 Criteria for safety of life and property at sea.

Subpart I—Miscellaneous

970.900 General.
970.901 Records to be maintained and information to be submitted by licensees.
970.902 Public disclosure of documents received by NOAA.
970.903 Relinquishment and surrender of licenses.
970.904 Amendment to regulations for conservation, protection of the environment and safety of life and property at sea.
970.905 Computation of time.
970.906 Compliance with Paperwork Reduction Act.

Subpart J—Uniform Procedures

970.1000 Applicability.
970.1001 Formal hearing procedures.
970.1002 Ex parte communications.

Subpart K—Enforcement

970.1100 General.
970.1101 Assessment procedure.
970.1102 Hearing and appeal procedures.
970.1103 License sanctions.
970.1104 Remission of forfeitures.
970.1105 Observers.
970.1106 Proprietary enforcement information.
970.1107 Advance notice of civil actions.

Subparts L-W—[Reserved]

Subpart X—Pre-enactment Exploration

970.2401 Definitions.
970.2402 Notice of pre-enactment exploration.

Subpart Y—Pre-license Exploration

970.2501 Notice of pre-license exploration voyages.
970.2502 Post voyage report.
970.2503 Suspension of exploration activities.

Subpart Z—Miscellaneous

970.2601 Additional information.

AUTHORITY: 30 U.S.C. 1411, 1468.

Subpart A—General

SOURCE: 46 FR 45896, Sept. 15, 1981, unless otherwise noted.

§ 970.100 Purpose.

(a) *General.* The purpose of this part is to implement those responsibilities and authorities of the National Oceanic and Atmospheric Administration (NOAA), pursuant to Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens licenses for the exploration for deep seabed hard minerals.

(b) *Purposes of the Act.* In preparing these regulations NOAA has been mindful of the purposes of the Act, as set forth in section 2(b) thereof. These include:

(1) Encouraging the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) Establishing, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(3) Accelerating the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assuring that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea;

(4) Encouraging the continued development of technology necessary to recover the hard mineral resources of the deep seabed; and

(5) Pending the ratification by, and entry into force with respect to, the United States of a Law of the Sea Treaty, providing for the establishment of an international revenue-sharing fund the proceeds of which will be used for sharing with the international community pursuant to such treaty.

(c) *Regulatory approach.* (1) These regulations incorporate NOAA's recognition that the deep seabed mining industry is still evolving and that more information must be developed to form the basis for future decisions by industry and by NOAA in its implementation of the Act. They also recognize the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative by miners to develop mining techniques and systems in a manner compatible with the requirements of the Act and regulations. In this regard, the regulations reflect an approach, pursuant to the Act, whereby their provisions ultimately will be addressed and evaluated on the basis of exploration plans submitted by applicants.

(2) In addition, these regulations reflect NOAA's recognition that the difference in scale and effects between exploration for and commercial recovery of hard mineral resources normally requires that they be distinguished and addressed separately. This distinction is also based upon the evolutionary stage of the seabed mining industry referenced above. Thus, NOAA will issue separate regulations pertaining to commercial recovery, in Part 971 of this chapter.

[46 FR 45896, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.101 Definitions.

For purposes of this part, the term:

(a) "Act" means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96-283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, or a designee;

(c) "Applicant" means an applicant for an exploration license pursuant to the Act and this part;

(d) "Affiliate" means any person:

(1) In which the applicant or licensee owns or controls more than 5% interest;

(2) Which owns or controls more than 5% interest in the applicant or licensee; or

(3) Which is under common ownership or control with the applicant or licensee.

(e) "Commercial recovery" means:

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) "Continental Shelf" means:

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) "Controlling interest", for purposes of paragraph (t)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside:

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) "Exploration" means:

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of:

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(j) "Hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(k) "International agreement" means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(l) "Licensee" means the holder of a license issued under this part to engage in exploration;

(m) "New entrant" means any applicant, with respect to:

(1) Any application which has not been accorded a pre-enactment explorer priority of right under § 970.301; or

(2) Any amendment which has not been accorded a pre-enactment explorer priority of right under § 970.302.

(n) "NOAA" means the National Oceanic and Atmospheric Administration;

(o) "Permittee" means the holder of permit issued under NOAA regulations to engage in commercial recovery;

(p) "Person" means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) "Pre-enactment explorer" means a person who was engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(r) "Reciprocating state" means any foreign nation designated as such by the Administrator under section 118 of the Act;

(s) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(t) "United States citizen" means

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (t)(1) or (t)(2) of this section.

[46 FR 45896, Sept. 15, 1981, as amended at 47 FR 5967, Feb. 9, 1982]

§ 970.102 Nature of licenses.

(a) A license issued under this part will authorize the holder thereof to engage in exploration within a specific portion of the sea floor consistent with the provisions of the Act, this part, and the specific terms, conditions and restrictions applied to the license by the Administrator.

(b) Any license issued under this part will be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected within the same area of the sea floor. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of the Act.

§ 970.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.* (1) Except as authorized under Subpart C of this part, no United States citizen may engage in any exploration or commercial recovery unless authorized to do so under:

(i) A license or a permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit, or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section will not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted on shore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is author-

ized to be undertaken under a license or permit issued by the Administrator to a licensee or permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license issued pursuant thereto; the filing of specious claims in the United States or any other nation; and any other activity designed to harass deep seabed mining activities authorized by law. Interference does not include the exercise of any rights granted to United States citizens by the Constitution of the United States, any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens must exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of licenses or permits.* The Administrator will not issue:

(1) Any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(2) Any license or permit the exploration plan or recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) Any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) A permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(5) Any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act; or

(6) A license or permit, or approve the transfer of a license or permit, except to a United States citizen.

Subpart B—Applications

SOURCE: 46 FR 45898, Sept. 15, 1981, unless otherwise noted.

§ 970.200 General.

(a) *Who may apply; how.* Any United States citizen may apply to the Administrator for issuance or transfer of an exploration license. Applications must be submitted in the form and manner prescribed in this subpart.

(b) *Place, form and copies.* Applications for the issuance or transfer of exploration licenses must be submitted in writing, verified and signed by an authorized officer or other authorized representative of the applicant, in 30 copies, to the following address: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Suite 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235. The Administrator may waive, in whole or in part, at his discretion, the requirement that 30 copies of an application be filed with NOAA.

(c) *Use of application information.* The contents of an application, as set forth below, must provide NOAA with the information necessary to make determinations required by the Act and this part pertaining to the issuance or transfer of an exploration license. Thus, each portion of the application should identify the requirement in this part to which it responds. In addition, the information will be used by NOAA in its function under the Act of consultation and cooperation with other Federal agencies or departments in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies' responsibilities.

(d) *Pre-application consultation.* To assist in the development of adequate applications and assure that applicants understand how to respond to the provisions of this subpart, NOAA will be available for pre-application consultations with potential applicants. This includes consultation on the procedures in Subpart C. In appropriate circumstances, NOAA will provide written confirmation to the applicant of any oral guidance resulting from such consultations.

(e) *Priority of right.* (1) Priority of right for issuance of licenses to pre-enactment explorers will be established pursuant to Subpart C of this part.

(2) Priority of right for issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications, which are in substantial compliance with the requirements established under this subpart, pursuant to § 970.209, are filed with the Administrator.

(3) Applications must be received by the Office of Ocean Minerals and Energy on behalf of the Administrator before a priority can be established.

(4) Upon (i) a determination that:

(A) An application is not in substantial compliance in accordance with § 970.209 or Subpart C, as applicable;

(B) An application has not been brought into substantial compliance in accordance with § 970.210 or Subpart C, as applicable;

(C) A license has been relinquished or surrendered in accordance with § 970.903; or

(ii) A decision to:

(A) Deny certification of a license pursuant to § 970.407; or

(B) Deny issuance of a license pursuant to § 970.508,

and after the exhaustion of any administrative or judicial review of such determination or decision, the priority of right for issuance of a license will lapse.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to § 970.902.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982]

CONTENTS

§ 970.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the financial resources of the applicant to carry out, in accordance with this part, the exploration program set forth in the applicant's exploration plan. The information must show that the applicant is reasonably capable of committing or raising sufficient resources to cover the estimated costs of the exploration program. The information must be sufficient for the Administrator to make a determination on the applicant's financial responsibility pursuant to § 970.401.

(b) *Contents.* In particular, the information on financial resources must include:

(1) A description of how the applicant intends to finance the exploration program;

(2) The estimated cost of the exploration program;

(3) With respect to the applicant and those entities upon which the applicant will rely to finance his exploration activities, the most recent audited financial statement (for publicly-held companies, the most recent annual report and Form 10-K filed with the

Securities and Exchange Commission will suffice in this regard); and

(4) The credit rating and bond rating of the applicant, and such financing entities, to the extent they are relevant.

§ 970.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the technological capability of the applicant to carry out, in accordance with the regulations contained in this part, the exploration program set out in the applicant's exploration plan. It must contain sufficient information for the Administrator to make a determination on the applicant's technological capability pursuant to § 970.402.

(b) *Contents.* In particular, the information submitted pursuant to this section must demonstrate knowledge and skills which the applicant either possesses or to which he can demonstrate access. The information must include:

(1) A description of the exploration equipment to be used by the applicant in carrying out the exploration program;

(2) A description of the environmental monitoring equipment to be used by the applicant in monitoring the environmental effects of the exploration program; and

(3) The experience on which the applicant will rely in using this or similar equipment.

§ 970.203 Exploration plan.

(a) *General.* Each application must include an exploration plan which describes the applicant's projected exploration activities during the period to be covered by the proposed license. Generally, the exploration plan must demonstrate to a reasonable extent that the applicant's efforts, by the end of the 10-year license period, will likely lead to the ability to apply for and obtain a permit for commercial recovery. In particular, the plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a license and to the development and enforcement of the terms, conditions and restrictions for a license.

(b) *Contents.* The exploration plan must contain the following information. In presenting this information, the plan should incorporate the applicant's proposed individual approach, including a general description of how projected participation by other entities will relate to the following elements, if appropriate. The plan must present:

(1) The activities proposed to be carried out during the period of the license;

(2) A description of the area to be explored, including its delineation according to § 970.601;

(3) The intended exploration schedule which must be responsive to the diligence requirements in § 970.602. Taking into account that different applicants may have different concepts and chronologies with respect to the types of activities described, the schedule should include an approximate projection for the exploration activities planned. Although the details in each schedule may vary to reflect the applicant's particular approach, it should address in some respect approximately when each of the following types of activities is projected to occur.

(i) Conducting survey cruises to determine the location and abundance of nodules as well as the sea floor configuration, ocean currents and other physical characteristics of potential commercial recovery sites;

(ii) Assaying nodules to determine their metal contents;

(iii) Designing and testing system components onshore and at sea;

(iv) Designing and testing mining systems which simulate commercial recovery;

(v) Designing and testing processing systems to prove concepts and designing and testing systems which simulate commercial processing;

(vi) Evaluating the continued feasibility of commercial scale operations based on technical, economic, legal, political and environmental considerations; and

(vii) Applying for a commercial recovery permit and, to the extent known, other permits needed to construct and operate commercial scale facilities (if application for such permits is planned prior to obtaining a commercial recovery permit);

(4) A description of the methods to be used to determine the location, abundance, and quality (i.e., assay) of nodules, and to measure physical conditions in the area which will affect nodule recovery system design and operations (e.g., seafloor topography, seafloor geotechnic properties, and currents);

(5) A general description of the developing recovery and processing technology related to the proposed license, and of any planned or ongoing testing and evaluation of such technology. To the extent possible at the time of application, this description should address such factors as nodule collection technique, seafloor sediment rejection subsystem, mineship nodule separation scheme, pumping method, anticipated equipment test areas, and details on the testing plan;

(6) An estimated schedule of expenditures, which must be responsive to the diligence requirements as discussed in § 970.602;

(7) Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery. These measures must take into account the provisions in §§ 970.506, 970.518, 970.522 and Subpart G of this part; and

(8) A description of any relevant activity that the applicant has completed prior to the submission of the application.

§ 970.204 Environmental and use conflict analysis.

(a) *Environmental information.* To enable NOAA to implement better its responsibility under section 109(d) of the Act to develop an environmental impact statement (EIS) on the issuance of an exploration license, the application must include information for use in preparing NOAA's EIS on the environmental impacts of the activities proposed by the applicant. The applicant must present physical, chemical and biological information for the exploration area. This information should include relevant environmental information, if any, obtained during past exploration activities, but need not duplicate information obtained during NOAA's DOMES Project. Planned activities in the area, including the testing of integrated mining systems which simulate commercial recovery, also must be described. NOAA will need information with the application on location and boundaries of the proposed exploration area, and plans for delineation of features of the exploration area including baseline data or plans for acquiring them. The applicant may at his option delay submission of baseline and equipment data and system test plans. However, applicants so electing should plan to submit this latter information at least one year prior to the initial test, to allow time for the supplement to the site-specific EIS, if one is required, to be prepared by NOAA, circulated, reviewed and filed with EPA. The submission of this information with the application is strongly encouraged, however, to minimize the possibility that a supplement will be required. If such latter information is submitted subsequent to the original application such tests may not be undertaken in the absence of concurrence by NOAA (which, if applicable, will be required in a term, condition, or restriction in the license). NOAA has developed a technical guidance document which will provide assistance for the agency and the applicant, in consultation, to identify the details on information needed in each case. NOAA may refer to such information for purposes of other determinations under the Act as well. NOAA also will seek to facilitate other Federal and, as necessary, state decisions on exploration activities by functioning as lead agency for the EIS on the application and related actions by other agencies, including those pertaining to any onshore impacts which may result from the proposed exploration activities.

(b) *Use conflict information.* To assist the Administrator in making determinations relating to potential use conflicts between the proposed exploration and other activities in the exploration area, pursuant to §§ 970.503, 970.505, and 970.520, the application must include information known to the applicant with respect to such other activities.

§ 970.205 Vessel safety.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to §§ 970.507, 970.521 and Subpart H of this part, the application must contain the following information, except for those vessels under 300 gross tons which are engaged in oceanographic research if they are used in exploration.

(a) *U.S. flag vessel.* The application must contain a demonstration or affirmation that any United States flag vessel utilized in exploration activities will possess a current valid Coast Guard Certificate of Inspection (COI). To the extent that the applicant knows which United States flag vessel he will be using, the application must include a copy of the COI.

(b) *Foreign flag vessel.* The application must also contain information on any foreign flag vessels to be used in exploration activities, which responds to the following requirements. To the extent that the applicant knows which foreign flag vessel he will be using, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels he will be using, he must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 970.206 Statement of ownership.

The application must include sufficient information to demonstrate that the applicant is a United States citizen, as required by § 970.103(b)(6), and as defined in § 970.101(t). In particular, the application must include:

(a) Name, address, and telephone number of the United States citizen responsible for exploration operations to whom notices and orders are to be delivered; and

(b) A description of the citizen or citizens engaging in such exploration, including:

(1) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(2) The state of incorporation or state in which the partnership or other business entity is registered;

(3) The name of registered agent or equivalent representative and places of business;

(4) Certification of essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(5) The name of each member of the association, partnership, or joint venture, including information about the participation of each partner and joint venturer and/or ownership of stock.

§ 970.207 Antitrust information.

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) A copy of each agreement between any parties to any joint venture which is applying for a license, provided that said agreement relates to deep seabed hard mineral resource exploration or mining;

(2) The identity of any affiliate of any person applying for a license; and

(3) For each applicant, its affiliate, or parent or subsidiary of an affiliate which is engaged in production in, or

the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals or any metals refined from these minerals:

(i) The annual tons and dollar value of any of these minerals and metals so purchased, sold or produced for the two preceding years;

(ii) Copies of the annual report, balance sheet and income statement for the two preceding years; and

(iii) Copies of each document submitted to the Securities and Exchange Commission.

§ 970.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of an exploration license will be certified unless the applicant pays to NOAA a reasonable administrative fee, which must reflect the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* In order to meet this requirement, the application must include a fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce. If costs incurred by NOAA in reviewing and processing an application are significantly less than or in excess of the original fee, the agency subsequently will determine those differences in costs and adjust the fee accordingly. If the costs are significantly less, NOAA will refund the difference. If they are significantly greater, the applicant will be required to submit the additional payment prior to issue or transfer of the license. In the case of an application for transfer of a license to an entity which has previously been found qualified for a license, the Administrator may, on the basis of pre-application consultations pursuant to § 970.200(d), reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee. If an applicant elects to pursue the 'banking' option under § 970.601(d), and exercises that option by submitting two applications, only one application fee needs to be submitted with respect to each use of the 'banking' option.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5966, 5968, Feb. 9, 1982]

PROCEDURES

§ 970.209 Substantial compliance with application requirements.

(a) Priority of right for the issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under this subpart are filed with the Administrator pursuant to § 970.200.

(b) In order for an application to be in substantial compliance with the requirements of this subpart, it must include information specifically identifiable with and materially responsive to each requirement contained in §§ 970.201 through 970.208. A determination on substantial compliance relates only to whether the application contains the required information, and does not constitute a determination on certification of the application, or on issuance or transfer of a license.

(c) The Administrator will make a determination as to whether the application is in substantial compliance. Within 30 days after receipt of an application and the opening of coordinates describing the application area, he will issue written notice to the applicant regarding such determination. The notice will identify, if applicable, in what respects the application is not in either full or substantial compliance. If the application is in substantial but not full compliance, the notice will specify the information which the applicant must submit in order to bring it into full compliance, and why the additional information is necessary.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§ 970.210 Reasonable time for full compliance.

Priority of right will not be lost in case of any application filed which is in substantial but not full compliance, as specified in § 970.209, if the Administrator determines that the applicant, within 60 days after issuance to the applicant by the Administrator of written notice that the application is in substantial but not full compliance, has brought the application into full compliance with the requirements of §§ 970.201 through 970.208.

[46 FR 45898, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.211 Consultation and cooperation with Federal agencies.

(a) Promptly after his receipt of an application and the opening of coordinates describing the application area, the Administrator will distribute a copy of the application to each other Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (i.e., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, Small Business Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application which is in full compliance with this subpart, recommend certification of the application, issuance or transfer of the license, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to § 970.207, must be submitted within 90 days after their receipt of a copy of the application which is in full compliance with this subpart. NOAA will use the benefits of this process of consultation and cooperation to facilitate necessary Federal decisions on the proposed exploration activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities.

(b) In any case in which a Federal agency or department recommends a denial, it will set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and will indicate how the application may be amended, or how terms, conditions or restrictions might be added to the license to assure compliance with such law or regulation.

(c) A recommendation from another Federal agency or department for denying or amending an application will not affect its having been in substantial compliance with the requirements of this subpart, pursuant to § 970.209, for purposes of establishing priority of right. However, pursuant to section 103(e) of the Act, NOAA will cooperate with such agencies and with the applicant with the goal of resolving the concerns raised and satisfying the statutory responsibilities of these agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§ 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each application for an exploration license, notice that such application has been received. Subject to § 970.902, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) After preparation of the draft EIS on an application pursuant to section 109(d) of the Act, the Administrator shall hold a public hearing on the application and the draft EIS in an appropriate location, and may employ such additional methods as he deems appropriate to inform interested persons about each application and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart J of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(c) Hearings held pursuant to this section and other procedures will be consolidated insofar as practicable with hearings held and procedures employed by other agencies.

§ 970.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a license, the applicant must submit an amendment to the application if required by a significant change in the circumstances represented in the original application and affecting the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, he will provide a copy of such amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 970.212. Such amendment, however, will not affect the priority of right established by the filing of the original application. After the issuance of or transfer of a license, any revision by the licensee will be made pursuant to § 970.513.

Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980; Resolution of Conflicts Among Overlapping Applications; Applications by New Entrants

SOURCE: 47 FR 24948, July 8, 1982, unless otherwise noted.

§ 970.300 Purposes and definitions.

(a) This subpart sets forth the procedures which the Administrator will apply to applications filed with NOAA covering areas of the deep seabed where the applicants have engaged in exploration prior to June 28, 1980, and to the resolution of conflicts arising out of such applications. This subpart also establishes the date on which NOAA will begin to accept applications or amendments filed by new entrants, and certain other procedures for new entrants.

(b) For the purposes of this subpart the term:

(1) "Amendment" means an amendment to an application which changes the area applied for;

(2) "Application" means an application for an exploration license which is filed pursuant to the Act and this subpart;

(3) "Conflict" means the existence of more than one application or amendment with the same priority of right:

(i) Which are filed with the Administrator or with the Administrator and a reciprocating state; and

(ii) In which the deep seabed areas applied for overlap in whole or part, to the extent of the overlap;

(4) "Original conflict" means a conflict solely between or among applications;

(5) "New conflict" means a conflict between or among amendments filed after July 22, 1982, and on or before October 15, 1982;

(6) "Domestic conflict" means a conflict solely between or among applications or amendments which have been filed with the Administrator.

(7) "International conflict" means a conflict arising between or among applications or amendments filed with the Administrator and a reciprocating state.

§ 970.301 Requirements for applications based on pre-enactment exploration.

(a) Pursuant to section 101(b) of the Act, any United States citizen who was engaged in exploration before the effective date of the Act (June 28, 1980) qualifies as a pre-enactment explorer and may continue to engage in such exploration without a license:

(1) If such citizen applies under this part for a license with respect to such exploration within the time period specified in paragraph (b) of this section; and

(2) Until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of

the application for, or issuance of, such license.

(b) Any application for a license based upon pre-enactment exploration must be filed, at the address specified in § 970.200(b), no later than 5:00 p.m. EST on March 12, 1982 (or such later date and time as the Administrator may announce by regulation). All such applications filed at or before that time will be deemed to be filed on such closing date.

(c) Applications not filed in accordance with this section will not be considered to be based on pre-enactment exploration, and may be filed only as new entrant applications under § 970.303.

(d) To receive a pre-enactment explore priority of right for issuance of a license, and application must be, when filed, in substantial compliance with requirements described in § 970.209(b). An application which is in substantial but not full compliance will not lose its priority of right if it is brought into full compliance according to § 970.210.

(e) Any application based on pre-enactment exploration must be for a reasonably compact area with respect to which the applicant is a pre-enactment explorer, and, notwithstanding any part of § 970.601 which indicates otherwise, such area must be bounded by a single continuous boundary.

(f) The coordinates and any chart of the logical mining unit applied for in an application based on a pre-enactment exploration must be submitted in a separate, sealed envelope.

(g) On or before March 12, 1982, the applicants must indicate to the Administrator, other than in the sealed portion of the application: (1) The size of the area applied for; (2) Whether the applicant or any person on the applicant's behalf has applied, or intends to apply, for the same area or substantially the same area to one or more nations, and the number of such other applications; and (3) Whether the other applicant is pursuing the "banking" option under § 970.601(d), and the number of applications filed, or to be filed, in pursuit of the "banking" option.

§ 970.302 Procedures and criteria for resolving conflicts.

(a) *General.* This section governs the resolution of all conflicts between or among applications or amendments having pre-enactment explorer priority of right.

(b) *Identification of applicants.* On June 21, 1982, the Administrator will meet with representatives of reciprocating states to identify their respective pre-enactment explorer applicants, and will identify the coordinates of the application areas applied for by such applicants.

(c) *Initial processing.* On or before July 13, 1982, the Administrator will determine whether each domestic application is entitled to a priority of right based on pre-enactment exploration in accordance with § 970.301.

(d) *Identification of conflicts.* On July 14, 1982, the Administrator will meet with representatives of reciprocating states to exchange lists of applications accorded pre-enactment explorer priorities of right, and will identify any conflicts existing among such applications.

(e) *Notification to applicants of conflicts.* If the Administrator identifies a conflict, he will send, no later than July 22, 1982, written notice of the conflict to each domestic applicant involved in the conflict. The notice will:

(1) Identify each applicant involved in the conflict in question:

(2) Identify the coordinates of the portions of the application areas which are in conflict;

(3) Indicate that the applicant may request from the Administrator the coordinates of the application areas from any other applications filed with the Administrator or with a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(4) State whether;

(i) Each domestic application involved in the conflict is in substantial or, if known, full compliance with the requirements described in § 970.209(b); and

(ii) Each foreign application involved in the conflict meets, if known, the legal requirements of the reciprocating state in which it is filed;

(5) Notify each domestic applicant involved in a conflict that he may, after July 22, 1982, and on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(6) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(f) *Voluntary resolution of conflicts.* Each U.S. applicant involved in a conflict may resolve the conflict after July 22, 1982, and on or before November 16, 1982, by:

(1) Unilaterally, or by agreement with each other applicant involved in the conflict, filing an amendment to the application eliminating the conflict; or

(2) Agreeing in writing with the other applicant(s) involved in the conflict to submit it to an agreed binding conflict resolution procedure.

(g) *Amendments.* (1) Amendments must be filed in accordance with the requirements for applications described in § 970.200.

(2) The Administrator will:

(i) Accept no amendment prior to July 23, 1982;

(ii) Accord pre-enactment explorer priority of right only to amendments which:

(A) Pertain to areas with respect to which the applicant has engaged in pre-enactment exploration;

(B) Resolve an existing conflict with respect to that application;

(C) Do not apply for an area included in an application filed pursuant to § 970.301 which is accorded pre-enactment explorer priority of right or an application identified pursuant to § 970.302(b) which has been filed with a reciprocating state; and

(D) Are filed on or before October 15, 1982; and

(iii) Accord amendments which meet the requirements of this paragraph (g) the same priority of right as the applications to which they pertain.

(3) The area applied for in an amendment need not be adjacent to the area applied for in the original application.

(4) Amendments not accorded pre-enactment explorer priority of right may be filed as new entrant amendments under § 970.303.

(h) *Notification of amendments and new conflicts.* The Administrator will:

(1) No later than October 25, 1982, notify each reciprocating state of any amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section and, in cooperation with such states, identify any new conflicts;

(2) No later than October 27, 1982, notify each domestic applicant who is involved in a new conflict. The notice will:

(i) Identify each applicant with whom each new conflict has arisen;

(ii) Identify the coordinates of each area in which the applicant is involved in a new conflict;

(iii) Indicate that the applicant may request from the Administrator the coordinates of each area included in an amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section, or for which notice has been received from a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(iv) Notify the applicant that he may, on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(v) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(i) *Government assistance in resolving international conflicts.* If, by October 26 1982, the applicants have not resolved, or agreed in writing to a specified binding procedure to resolve, an original international conflict, or new international conflict, the Administrator, the Secretary of State of the United States, and appropriate officials of the government of the reciprocating state to which the other applicant involved in the conflict applied will use their good offices to assist the applicants to resolve the conflict. After November 16, 1982, any unresolved international conflicts will be resolved in accordance with paragraph (k) of this section.

(j) *Unresolved domestic conflict*—(1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart J of this part, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to § 970.1001(f)(2) or (f)((3); and

(B) The administrative law judge will take such actions as he deems necessary and appropriate to conclude the hearing and transmit a recommended decision to the Administrator in an expeditious manner.

(ii) Notwithstanding the above, at any time on or after November 17, 1982, and on or before April 14, 1983, the applicants involved in the conflict may, by agreement, request the Administrator to resolve the conflict in a formal hearing as described above.

(2) *Decision principles for NOAA formal conflict resolution.* (i) The Administrator shall determine which applicant involved in a conflict between or among pre-enactment explorer applications or amendments shall be awarded all or part of each area in conflict.

(ii) The determination of the Administrator shall be based on the application of principles of equity which take into consideration, with respect to each applicant involved in the conflict, the following factors:

(A) The continuity and extent of activities relevant to each area in conflict and the application area of which it is a part;

(B) The date on which each applicant involved in the conflict, or predecessor in interest or component organization thereof, commenced activities at sea in the application area;

(C) The financial cost of activities relevant to each area in conflict and to the application area of which it is a part, measured in constant dollars;

(D) The time when the activities were carried out, and the quality of the activities; and

(E) Such additional factors as the Administrator determines to be relevant, but excluding consideration of the future work plans of the applicants involved in any conflict.

(iii) For the purposes of this paragraph (j) of this section, the word "activities" means the undertakings, commitments of resources investigations, findings, research, engineering development and other activities relevant to the identification, discovery, and systematic analysis and evaluation of hard mineral resources and to the determination of the technical and economic feasibility of commercial recovery.

(iv) When considering the factors specified in paragraph (j)(2)(ii) of this section, the Administrator shall hear, and shall (except for purposes of apportionment pursuant to paragraph (j)(2)(v) of this section) limit his consideration to, all evidence based on the activities specified in paragraph (j)(2)(ii) of this section which were conducted on or before January 1, 1982, *Provided, however,* That an applicant must prove at-sea activities in the area in conflict prior to June 28, 1980, as a pre-condition to presentation of further evidence to the Administrator regarding activities in the area in conflict.

(v) In making his determination, the Administrator may award the entire area in conflict to one applicant involved in the conflict, or he may apportion the area among any or all of the applicants involved in the conflict. If, after applying the principles of equity, the Administrator determines that the area in conflict should be apportioned, the Administrator shall (to the maximum extent practicable consistent with the Administrator's application of the principles of equity) apportion the area in a manner designed to satisfy the plan of work set forth in the application of each applicant which is awarded part of the area.

(vi) Each applicant involved in the conflict must file an amendment to its application if necessary to implement the determination made by the Administrator.

(k) *Unresolved international conflicts.* (1) If, by November 17, 1982, all applicants involved in an original or new international conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the applicants shall proceed in accordance with the conflict resolution procedures agreed to between the United States and its reciprocating states pursuant to section 118 of the Act.

(2) Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

(l) *Continued opportunity for voluntary resolutions.* Each applicant may resolve any conflict by voluntary procedures at any time while that conflict persists.

(m) *Effect on priorities of new entrants.* (1) A pre-enactment explorer is entitled to a priority of right over a new entrant for any area in which the pre-enactment explorer has engaged in exploration prior to June 28, 1980 if, with respect to that area, the pre-enactment explorer files an application in accordance with this part on or after January 25, 1982 and on or before the closing date for pre-enactment explorer applications established under § 970.301(b).

(2) Any amendment which is filed by a pre-enactment explorer on or before October 15, 1982, relates back to the date of filing of the original application and shall give the pre-enactment explorer priority of right over all new entrants if the amendment is accorded a pre-enactment explorer priority of right under paragraph (g) of this section.

§ 970.303 Procedures for new entrants.

(a) *Filing of new entrant applications or amendments; priority of right.* New entrant applications or amendments must be filed in accordance with § 970.200. A new entrant may file an application or amendment only at or after 1500 hours G.m.t. (11:00 a.m. EDT) January 3, 1983. All applications or amendments filed at that time shall be deemed to be filed simultaneously, and, if in accordance with § 970.209, shall have priority of right over any application or amendment filed subsequently. Priority of right for any application or amendment filed after that time will be established as described in § 970.209.

(b) *Conflicts.* (1) If a domestic conflict exists between or among new entrant applications or amendments, the applicants involved in the conflict shall resolve it.

(2) If an international conflict exists between or among new entrant applications or amendments, the conflict shall be resolved in accordance with applicable conflict resolution procedures agreed to between the United States and its reciprocating States pursuant to section 118 of the Act. The Administrator will provide each domestic applicant involved in an international conflict a copy of any such procedures in force when the Administrator issues notice to the applicant that an international conflict exists. Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

§ 970.304 Action on portions of applications or amendments not in conflict.

If an applicant so requests, the Administrator will proceed in accordance with this part to review that portion of an area included in an application or amendment that is not involved in a conflict. However, the Administrator will proceed with such review only if the applicant advises the Administrator in writing that the applicant will continue to seek a license for the proposed exploration activities in the portion of the application area that is not in conflict. To the extent practicable, the deadlines for certification of an application or amendment and issuance of a license provided in § 970.400 and § 970.500, respectively, will run from the date of filing of the original application.

Subpart D—Certification of Applications

SOURCE: 46 FR 45902, Sept. 15, 1981, unless otherwise noted.

§ 970.400 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a license and its actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a license, he must determine that issuance of the license would not violate any of the restrictions in § 970.103(b). He also must make written determinations with respect to the requirements set forth in §§ 970.401 through 970.406. This will be done after consultation with other departments and agencies pursuant to § 970.211.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification of an application within 100 days after submission of an application which is in full compliance with Subpart B of this part. If final certification or denial of certification has not occurred within 100 days after such submission of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the agency's efforts to resolve them, and an estimate of the time required to do so.

§ 970.401 Financial responsibility.

(a) Before the Administrator may certify an application for an exploration license he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will be financially responsible to meet all obligations which he may require to engage in the exploration proposed in the application.

(b) In order for the Administrator to make this determination, the applicant must show to the Administrator's satisfaction that he is reasonably capable of committing or raising sufficient resources to carry out, in accordance with the provisions contained in this part, the exploration program set forth in his exploration plan.

§ 970.402 Technological capability.

(a) Before the Administrator may certify an application for an exploration license, he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will possess, or have access to or a reasonable expectation of obtaining, the technological capability to engage in the proposed exploration.

(b) In order for the Administrator to make this determination, the applicant must demonstrate to the Administrator's satisfaction that the applicant will possess or have access to, at the time of issuance or transfer of the license, the technology and expertise, as needed, to carry out the exploration program set forth in his exploration plan.

§ 970.403 Previous license and permit obligations.

In order to certify an application, the Administrator must find that the applicant has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act.

§ 970.404 Adequate exploration plan.

Before he may certify an application, the Administrator must find that the proposed exploration plan of the applicant meets the requirements of § 970.203.

§ 970.405 Appropriate exploration site size and location.

Before the Administrator may certify an application, he must approve the size and location of the exploration area selected by the applicant. The Administrator will approve the size and location of the area unless he determines that the area is not a logical mining unit pursuant to § 970.601.

§ 970.406 Fee payment.

Before the Administrator may certify an application, he must find that the applicant has paid the license fee as specified in § 970.208.

§ 970.407 Denial of certification.

(a) The Administrator may deny certification of an application if he finds that the requirements of this subpart have not been met. If, in the course of reviewing an application for certification, the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer under §§ 970.503 through 970.507 will not be met, he may also deny certification of the application.

(b) When the Administrator proposes to deny certification he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. Such notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 970.408 Notice of certification.

Upon making a final determination to certify an application for an exploration license, the Administrator will promptly send written notice of his determination to the applicant.

Subpart E—Issuance/Transfer/Terms, Conditions and Restrictions

SOURCE: 46 FR 45903, Sept. 15, 1981, unless otherwise noted.

§ 970.500 General.

(a) *Proposal.* After certification of an application pursuant to Subpart D of this part, the Administrator will proceed with a proposal to issue or transfer a license for the exploration activities described in the application.

(b)(1) *Terms, conditions and restrictions.* Within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) after certification, the Administrator will propose terms and conditions for, and restrictions on, the proposed exploration which are consistent with the provisions of the Act and this part as set forth in §§ 970.517 through 970.524. Proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose these in writing to the applicant. Also, public notice thereof will be provided pursuant to § 970.501, and they will be included with the draft of the EIS on the issuance of a license which is required by section 109(d) of the Act.

(2) If the Administrator does not propose terms, conditions and restrictions within 180 days after certification, he will notify the applicant in writing of the reasons for the delay and will indicate the approximate date on which the proposed terms, conditions and restrictions will be completed.

(c) *Findings.* Before issuing or transferring an exploration license, the Administrator must make written findings in accordance with the requirements of §§ 970.503 through 970.507. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. He will make a final determination on issuance or transfer of a license, and will publish a final EIS on that action, within 180 days (or such longer period of time as he may establish for good cause shown in writing) following the date on which proposed terms, conditions and restrictions, and the draft EIS, are published.

ISSUANCE/TRANSFER; MODIFICATION/REVISION; SUSPENSION/REVOCATION

§ 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to § 970.902, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart J of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for, the license.

(c) Hearings held pursuant to this section will be consolidated insofar as practicable with hearings held by other agencies.

§ 970.502 Consultation and cooperation with Federal agencies.

Prior to the issuance or transfer of an exploration license, the Administrator will continue the consultation and cooperation with other Federal agencies which were initiated pursuant to § 970.211. This consultation will be to assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. He also will consult, prior to any issuance, transfer, modification or renewal of a license, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to such license could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

§ 970.503 Freedom of the high seas.

(a) Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that exploration for hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each licensee must act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the exploration program of an applicant or licensee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place in a manner in which neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the exploration plan, the Administrator will decide whether to issue or transfer the license.

§ 970.504 International obligations of the United States.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 970.505 Breach of international peace and security involving armed conflict.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 970.506 Environmental effects.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable EIS prepared pursuant to section 109(c) or 109(d) of the Act. This finding also will be based upon the considerations and approach in § 970.701.

§ 970.507 Safety at sea.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements reflected in §§ 970.205 and 970.801.

§ 970.508 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a license if he finds that the applicant or the proposed exploration activities do not meet the requirements of this part for the issuance or transfer of a license.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of such intention to deny issuance or transfer. Such notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

The FEDERAL REGISTER notice will not include the coordinates of the proposed exploration area.

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a license is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 970.509 Notice of issuance or transfer.

If the Administrator finds that the requirements of this part have been met, he will issue or transfer the license along with the appropriate terms, conditions and restrictions. Notification thereof will be made in writing to the applicant and in the FEDERAL REGISTER.

§ 970.510 Objections to terms, conditions and restrictions.

(a) The licensee may file a notice of objection to any term, condition or restriction in the license. The licensee may object on the grounds that any term, condition or restriction is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the licensee does not file notice of an objection within the 60-day period immediately following the licensee's receipt of the notice of issuance or transfer under § 970.509, he will be deemed conclusively to have accepted the terms, conditions and restrictions in the license.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must contain the precise legal basis for the objection, and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the licensee, written notice of his decision.

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart J of this part.

(e) Any final determination by the Administrator on an objection to terms, conditions or restrictions in a license after the formal hearing provided in paragraph (d) of this section is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart K of this part, or in addition to the imposition of any fine under Subpart K, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

(2) Suspend or modify particular activities under any license, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) of this section will proceed pursuant to the procedures in § 970.1103. Any action taken in accordance with paragraph (a)(2) of this section will proceed pursuant to paragraphs (c) through (i) of this section.

(c) Prior to taking any action specified in paragraph (a)(2) of this section the Administrator will publish in the FEDERAL REGISTER, and send to the licensee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the licensee can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (this period of time may not exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date the notice is sent to the licensee, under paragraph (c) of this section, unless before such 30th day the licensee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) of this section in which the licensee must correct the deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (d)(1) of this section is not pending or in progress.

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart J of this part. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the licensee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of exploration activities by a licensee, except as provided in paragraph (i) of this section.

(i) The provisions of paragraphs (c), (d), (e) and (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension of a license, or immediate suspension or modification of particular activities under such license, is necessary for the reasons set forth in paragraph (a)(2) of this section; or

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Admin-

istrator issues an emergency order in accordance with § 970.1103(d)(4).

(j) The Administrator will immediately rescind the emergency order as soon as he has determined that the cause for the order has been removed.

§ 970.512 Modification of terms, conditions and restrictions.

(a) After issuance or transfer of any license, the Administrator, after consultation with interested agencies and the licensee, may modify any term, condition, or restriction in such license for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the provisions of § 970.503;

(2) If relevant data and other information (including, but not limited to, data resulting from exploration activities under the license) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) The procedures for objection to the modification of a term, condition or restriction will be the same as those for objection to an original term, condition or restriction under § 970.510, except that the period for filing notice of objection will run from the receipt of notice of proposed modification. Public notice of proposed modifications under this section will be made according to § 970.514. On or before the date of publication of public notice, written notice will be provided to the licensee.

[46 FR 45903, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.513 Revision of a license.

(a) During the term of an exploration license, the licensee may submit to the Administrator an application for a revision of the license or the exploration plan associated with it. NOAA recognizes that changes in circumstances encountered, and in information and technology developed, by the licensee during exploration may require such revisions. In some cases it may even be advisable to recognize at the time of filing the original license application that although the essential information for issuing or transferring a license as specified in §§ 970.201 through 920.208 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a license which would authorize exploration activities and plans only to the extent described in the application.

(b) The Administrator will approve such application for a revision upon a finding in writing that the revision will comply with the requirements of the Act and this part.

(c) A change which would require an application to and approval by the Administrator as a revision is a major change in one or more of:

(1) The bases for certifying the original application pursuant to §§ 970.401 through 970.406;

(2) The bases for issuing or transferring the license pursuant to §§ 970.503 through 970.507; or

(3) The terms, conditions and restrictions issued for the license pursuant to §§ 970.517 through 970.524.

A major change is one which is of such significance so as to raise a question as to:

(i) The applicant's ability to meet the requirements of the sections cited in paragraphs (c) (1) and (2) of this section; or

(ii) The sufficiency of the terms, conditions and restrictions to accomplish their intended purpose.

§ 970.514 Scale requiring application procedures.

(a) A proposal by the Administrator to modify a term, condition or restriction in a license pursuant to § 970.512, or an application by a licensee for revision of a license or exploration plan pursuant to § 970.513, is significant, and the full application requirements and procedures will apply, if it would result in other than an incidental:

(1) Increase in the size of the exploration area; or

(2) Change in the location of the area.

An incidental increase or change is that which equals two percent or less of the original exploration area, so long as such adjustment is contiguous to the licensed area.

(b) All proposed modifications or revisions other than described in paragraph (a) of this section will be acted on after a notice thereof is published by the Administrator in the FEDERAL REGISTER, with a 60-day opportunity for public comment. On a case-by-case basis, the Administrator will determine if other procedures, such as a public hearing in a potentially affected area, are warranted. Notice of the Administrator's decision on the proposed modification will be provided to the licensee in writing and published in the FEDERAL REGISTER.

§ 970.515 Duration of a license.

(a) Each exploration license will be issued for a period of 10 years.

(b) If the licensee has substantially complied with the license and its associated exploration plan and requests an extension of the license, the Administrator will extend the license on terms, conditions and restrictions consistent with the Act and this part for a period of not more than 5 years.

In determining substantial compliance for purposes of this section, the Administrator may make allowance for deviation from the exploration plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended exploration plan to govern the activities by the licensee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria, and for the length of time, specified in paragraph (b) of this section.

§ 970.516 Approval of license transfers.

(a) The Administrator may transfer a license after a written request by the licensee. After a licensee submits such a request to the Administrator, the proposed transferee will be deemed an applicant for an exploration license, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a license if the proposed transferee and exploration activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a licensee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

TERMS, CONDITIONS, AND RESTRICTIONS

§ 970.517 Diligence requirements.

The terms, conditions and restrictions in each exploration license must include provisions to assure diligent development. The Administrator will establish these pursuant to § 970.602.

§ 970.518 Environmental protection requirements.

(a) Each exploration license must contain such terms, conditions and restrictions, established by the Administrator, which prescribe actions the licensee must take in the conduct of exploration activities to assure protection of the environment. The Administrator will establish these pursuant to § 970.702.

(b) Before establishing the terms, conditions and restrictions pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. He also will take into account and give due consideration to the information contained in the final EIS prepared with respect to that proposed license.

§ 970.519 Resource conservation requirements.

For the purpose of conservation of natural resources, each license issued under this part will contain, as needed, terms, conditions and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the license area. The Administrator will establish these pursuant to § 970.603.

§ 970.520 Freedom of the high seas requirements.

Each license issued under this part must include such restrictions as may be necessary and appropriate to ensure that the exploration activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law, such as fishing, navigation, submarine pipeline and cable laying, and scientific research. The Administrator will consider the provisions in § 970.503 in establishing these restrictions.

§ 970.521 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any license issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to Subpart H of this part.

§ 970.522 Monitoring requirements.

Each exploration license must require the licensee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee in exploration activities to:

(1) Monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license; and

(2) Report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(b) To cooperate with such officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the exploration activities in accordance with a monitoring plan approved and issued by the Administrator as license terms, conditions and restrictions, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects. This environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart G of this part.

§ 970.523 Special terms, conditions, and restrictions.

Although the general criteria and standards to be used in establishing terms, conditions, and restrictions for a license are set forth in this part, as referenced in §§ 970.517 through 970.522, the Administrator may impose special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 970.524 Other Federal requirements.

Pursuant to § 970.211, another Federal agency, upon review of an exploration license application submitted under this part, may indicate how terms, conditions, and restrictions might be added to the license, to assure compliance with any law or regulation within that agency's area of responsibility. In response to the intent, reflected in section 103(e) of the Act, to reduce the number of separate actions to satisfy the statutory responsibilities of these agencies, the Administrator may include such terms, conditions, and restrictions in a license.

Subpart F—Resource Development Concepts

SOURCE: 46 FR 45907, Sept. 15, 1981, unless otherwise noted.

§ 970.600 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, under section 103(a)(2)(D) of the Act, the applicant will select the size and location of the area of an exploration plan, which will be approved unless the Administrator finds that the area is not a "logical mining unit." Also, pursuant to section 108 of the Act the applicant's exploration plan and the terms, conditions and restrictions of each license must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each license is to contain, but only as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 970.601 Logical mining unit.

(a) In the case of an exploration license, a logical mining unit is an area of the deep seabed which can be explored under the license, and within the 10-year license period, in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan. In addition, it must be of sufficient size to allow for intensive exploration.

(b) Approval by the Administrator of a proposed exploration logical mining unit will be based on a case-by-case review of each application. In order to provide a proper basis for this evaluation, the applicant's exploration plan should describe the seabed topography, the location of mineral deposits and the nature of planned equipment and operations. Also, the exploration plan must show the relationship between the area to be explored and the applicant's plans for commercial recovery volume, to the extent projected in the exploration plan.

(c) In delineating an exploration area, the applicant need not include unmineable areas. Thus, the area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit. In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

(d) At the applicant's option, for the purpose of satisfying a possible obligation under a future Law of the Sea Treaty, the applicant may propose an exploration area which includes two exploration logical mining units. The applicant should specify in the application if this "banking" option is chosen, and any applicant choosing this option and filing an application based on pre-enactment exploration under § 970.301 shall so notify the Administrator in accordance with § 970.301(g).

(e) Applicants are advised that NOAA will not accept an application or issue a license for an exploration area larger than 150,000 square kilometers unless the applicant can demonstrate the necessity of a larger area based on factors such as topography, nodule abundance, distribution and ore grade. If the applicant elects to pursue the "banking" option described in paragraph (d) of this section, and wishes to apply for an exploration area larger than 150,000 square kilometers, the applicant must file a second application with respect to at least the area in excess of 150,000 square kilometers, unless the applicant justifies such excess area as part of a single application under the preceding sentence.

[46 FR 45907, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982]

§ 970.602 Diligent exploration.

(a) Each licensee must pursue diligently the activities described in his approved exploration plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. To help assure this diligence, terms, conditions and restrictions which the Administrator issues with a license will require such periodic reasonable expenditures for exploration by the licensee as the Administrator may establish, taking into account the size of the area of the deep seabed to which the exploration plan applies and the amount of funds which is estimated by the Administrator to be required during exploration for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. However, such required expenditures will not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(b) In order to fulfill the diligence requirement, the applicant first must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 970.203(b) (3) and (6). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can complete his exploration activities within the term of the license. In this regard, there must be a reasonable relationship between the size of the exploration area and the financial and technological resources reflected in the application. Also, the exploration must clearly point toward developing the ability, by the end of the 10-year license period, to apply for and obtain a permit for commercial recovery.

(c) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the licensee's reasonable conformance to the approved exploration plan. Such determination, however, will take into account the need for some degree of flexibility in an exploration plan. It also will include consideration of the needs and stage of development of each licensee, again based on the approved exploration plan. In addition, the determination will take account of legitimate periods of time when there is no or very low expenditure, and will allow for a certain degree of flexibility for changes encountered by the licensee in such factors as its resource knowledge and financial considerations.

(d) In order for the Administrator to make determinations on a licensee's adherence to the diligence requirements, the licensee must submit a report annually reflecting his conformance to the schedule of activities and expenditures contained in the license. In case of any changes requiring a revision to an approved license and exploration plan, the licensee must advise the Administrator in accordance with § 970.513.

§ 970.603 Conservation of resources.

(a) With respect to the exploration phase of seabed mining, the requirement for the conservation of natural resources, encompassing due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license applies, may not be particularly relevant. Thus, since the Act requires such terms, conditions and restrictions only as needed, exploration licenses will require such provisions only as the Administrator deems necessary.

(b) NOAA views license phase mining system tests as an opportunity to examine, with industry, the conservation implications of any mining patterns used. Thus, in order to develop information needed for future decisions during commercial recovery, NOAA will include with a license a requirement for the submission of collector track and nodule production data. Only if information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will the Administrator modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problems.

(c) If the Administrator so modifies such terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration activities, economic and resource data, and the national need for hard mineral resources.

Subpart G—Environmental Effects

SOURCE: 46 FR 45908, Sept. 15, 1981, unless otherwise noted.

§ 970.700 General.

Congress, in authorizing the exploration for hard mineral resources under the Act, also enacted provisions relating to the protection of the marine environment from the effects of exploration activities. For example, before the Administrator may issue a license, pursuant to section 105(a)(4) of the Act he must find that the exploration proposed in an application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. Also, the Act requires in section 109(b) that each license issued by the Administrator must contain such terms, conditions and restrictions which prescribe the actions the licensee must take in the conduct of exploration activities to assure protection of the environment. Furthermore, the Act in section 105(c)(1)(B) provides for the modification by the Administrator of any term, condition or restriction if relevant data and other information indicates that modification is required to protect the quality of the environment. In addition, section 114 of the Act specifies that each license issued under the Act must require the licensee to monitor the environmental effects of the exploration activities in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

§ 970.701 Significant adverse environmental effects.

(a) *Activities with no significant impact.* NOAA believes that exploration activities of the type listed below are very similar or identical to activities considered in section 6(c)(3) of NOAA Directives Manual 02-10, and therefore have no potential for significant environmental impact, and will require no further environmental assessment.

(1) Gravity and magnetometric observations and measurements;

(2) Bottom and sub-bottom acoustic profiling or imaging without the use of explosives;

(3) Mineral sampling of a limited nature such as those using either core, grab or basket samplers;

(4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if permitted by the National Marine Fisheries Service or another Federal agency;

(5) Meteorological observations and measurements, including the setting of instruments;

(6) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(7) Sampling by box core, small diameter core or grab sampler, to determine seabed geological or geotechnical properties;

(8) Television and still photographic observation and measurements;

(9) Shipboard mineral assaying and analysis; and

(10) Positioning systems, including bottom transponders and surface and subsurface buoys filed in *Notices to Mariners.*

(b) *Activities with potential impact.* (1) NOAA research has identified at-sea testing of recovery equipment and the operation of processing test facilities as activities which have some potential for significant environmental impacts during exploration. However, the research has revealed that only the following limited effects are expected to have potential for significant adverse environmental impact.

(2) The programmatic EIS's documents three at-sea effects of deep seabed mining which cumulatively during commercial recovery have the potential for significant effect. These three effects also occur during mining system tests that may be conducted under a license, but are expected to be insignificant. These include the following:

(i) *Destruction of benthos in and near the collector track.* Present information reflects that the impact from this effect during mining tests under exploration licenses will be extremely small.

(ii) *Blanketing of benthic fauna and dilution of food supply away from mine site subareas.* The settling of fine sediments disturbed by tests under a license of scale-model mining systems which simulate commercial recovery could adversely affect benthic fauna by blanketing, diluation of their food supply, or both. Because of the anticipated slow settling rate of the sediments, the affected area could be quite large. However, research results are insufficient to conclude that this will indeed be a problem.

(iii) *Surface plume effect on fish larvae.* The impact of demonstration-scale mining tests during exploration is expected to be insignificant.

(3) If processing facilities in the United States are planned to be used for testing during exploration, NOAA also will assess their impacts in the site-specific EIS developed for each license.

(c) *NOAA approach.* In making determinations on significant adverse environmental effects, the Administrator will draw on the above conclusions and other findings in NOAA's programmatic environmental statement and site-specific statements issued in accordance with the Act. He will issue licenses with terms, conditions and restrictions containing, as appropriate, environmental protection or mitigation requirements (pursuant to § 970.518) and monitoring requirements (pursuant to § 970.522). The focus of NOAA's environmental efforts will be on environmental research and on monitoring during mining tests to acquire more information on the environmental effects of deep seabed mining. If these efforts reveal that modification is required to protect the quality of the environment, NOAA then may modify terms, conditions and restrictions pursuant to § 970.512.

§ 970.702 Monitoring and mitigation of environmental effects.

(a) *Monitoring.* If an application is determined to be otherwise acceptable, the Administrator will specify an environmental monitoring plan as part of the terms, conditions and restrictions developed for each license. The plan will be based on the monotoring plan proposed by the applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. This monitoring strategy will be devised to insure that the exploration activities do not deviate significantly from the approved exploration plan and to determine if the assessment of the plan's acceptability was sound. The monitoring plan, among other things, will include monitoring environmental parameters relating to verficiation of NOAA's findings concerning potential impacts, but relating mainly to the three unresolved concerns with the potential for significant environmental effect, as identified in § 970.701(b)(2). NOAA has developed a technical guidance document, which includes parameters pertaining to the upper and lower water column and operational aspects, which document will provide assistance in developing monitoring plans in consultation with applicants.

(b) *Mitigation.* Monitoring and continued research may develop information on future needs for mitigating environmental effects. If such needs are identified, terms, conditions and restrictions can be modified appropriately.

Subpart H—Safety of Life and Property at Sea

§ 970.800 General.

The Act contains requirements, in the context of several decisions, that relate to assuring the safety of life and property at sea. For instance, before the Administrator may issue a license, section 105(a)(5) of the Act requires that he find that the proposed exploration will not pose an inordinate threat to the safety of life and property at sea. Also, under section 112(a) of the Act the Coast Guard, in consultation with NOAA, must require in any license or permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea. In addition, under section 105(c)(1)(B) of the Act, the Administrator may modify terms, conditions and restrictions for a license if required to promote the safety of life and property at sea.

[46 FR 45909, Sept. 15, 1981]

§ 970.801 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements. These inspection requirements may be identified by reference to present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 U.S.C. 86 (Loadlines); 46 U.S.C. 395 (Inspection of seagoing barges over 100 gross tons); 46 U.S.C. 367 (Inspection of sea-going motor vessels over 300 gross tons); and 46 U.S.C. 404 (Inspection of vessels above 15 gross tons carrying freight for hire). All United States flag vessels will be required to meet existing regulatory requirements applicable to such vessels. This includes the requirement for a current valid Coast Guard Certificate of Inspection, as specified in § 970.205. Being United States flag, these vessels will be under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements or alternative IACS requirements, as specified in § 970.205, apply.

[46 FR 45909, Sept. 15, 1981]

Subpart I—Miscellaneous

SOURCE: 46 FR 45909, Sept. 15, 1981, unless otherwise noted.

§ 970.900 General.

This subpart contains miscellaneous provisions pursuant to the Act which are relevant to exploration licenses.

§ 970.901 Records to be maintained and information to be submitted by licensees.

(a)(1) In addition to the information specified elsewhere in this part, each licensee must keep such records, consistent with standard accounting principles, as the Administrator may specify with each license. Such records must include information which will fully disclose expenditures for exploration for hard mineral resources in the area under license, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part, each applicant or licensee will be required to submit to the Administrator at his request such data or other information as he may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of the license in question; compliance with the biennal Congressional report requirement contained in section 309 of the Act; and evaluation of the exploration activities conducted by the licensee. At a minimum, licensees must submit an annual written report, within 90 days after each anniversary of the license issuance or transfer, of exploration activities and expenditures to address the diligence requirements in § 970.602, and of environmental monitoring to address the requirements of § 970.522(c) and § 970.702(a).

§ 970.902 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part may request that certain information not be subject to public disclosure. The substantiation requested from such persons is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part, which information is considered by him to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the information be given confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of such information pursuant to paragraph (d) of this section.

(ii) If information is submitted to NOAA without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, NOAA will make such efforts as are administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which NOAA distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant or licensee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to NOAA in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(iii) With respect to information submitted as part of an application, twenty-five copies of the information for which confidential treatment is requested must be submitted.

(4) Normally, NOAA will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may decide to make a determination in advance of a request for disclosure, where it would facilitate NOAA's obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any such statement submitted will be treated as confidential if so requested by the person requesting confidential treatment. Any such statement for which confidential treatment is requested must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part shall be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether such person continues to maintain the request for confidential treatment;

(ii) Notify such person of the date (generally, not later than the close of business on the fourth working day after issuance of the notice) by which the person is strongly encouraged to deliver to NOAA a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform such person that by such date as the Administrator specifies (generally, not later than the close of business on the fourth working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to NOAA a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(B) Is strongly encouraged to deliver to NOAA an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in such forum as the Administrator deems appropriate (such as by telephone or in an informal conference), such person's arguments against disclosure of the information; and

(iv) Inform such person that the burden is on him to assure that any response to the notice is delivered to NOAA within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all of any statement submitted in response to any notice issued under paragraph (d)(2) of this section will be treated as confidential if so requested by the person submitting the response. Any such response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section;

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the Assistant General Counsel

for Administration, whether confidential treatment is warranted based on the information then available to NOAA;

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information;

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8;

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That such final agency action may be subject to judicial review under Chapter 7 of Title 5, United States Code; and

(iv) That on the fourth working day after issuance of the notice described in this paragraph (d)(7) of this section, the Administrator will make the information available to the person who requested disclosure unless NOAA has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) NOAA will keep a record of the date any notice is issued, and of the date any response is received, by NOAA under this paragraph (d) of this section.

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if 10 working days have passed after the receipt of a request for disclosure and, dispite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submissions of confidential information.* If any person (for example, an affiliate) has reason to believe that it would be prejudiced by furnishing information required from it to the applicant or licensee, such person may file the required information directly with NOAA. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by NOAA to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by NOAA to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secrets Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to NOAA for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

§ 970.903 Relinquishment and surrender of licenses.

(a) Any licensee may at any time, without penalty:

(1) Surrender to the Administrator a license issued to the licensee; or

(2) Relinquish to the Administrator, in whole or in part, any right to con-

duct any exploration activities authorized by the license.

(b) Any licensee who surrenders a license or relinquishes any such right will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee as a result of activities engaged in by the licensee under such license.

§ 970.904 Amendment to regulations for conservation, protection of the environment and safety of life and property at sea.

The Administrator may at any time amend the regulations in this part as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, and the safety of life and property at sea. Such amended regulations will apply to all exploration activities conducted under any license issued or maintained pursuant to this part; except that any such amended regulations which provide for conservation of natural resources will apply to exploration conducted under an existing license during the present term of such license only if the Administrator determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee. Any amendment to regulations under this section will be made pursuant to the procedures in Subpart J of this part, except that § 970.1001(f)(1) will not apply. Instead, the parties of right to the hearing will be limited to the Administrator. Other persons may file a request under § 970.1001(f)(2) or (3) to participate in the hearing.

§ 970.905 Computation of time.

Saturdays, Sundays, and Federal government holidays will be included in computing the time period allowed for filing any document or paper under this part, but when such time period expires on such a day, such time period will be extended to include the next following Federal government work day. Also, filing periods expire at the close of business on the day specified, and for the office specified.

§ 970.906 Compliance with Paperwork Reduction Act.

In accordance with 44 U.S.C. 3506(c) and 3512 NOAA hereby informs affected persons that the requests for information under this part requiring:

(a) Submissions of specified information with applications; and

(b) Compliance with specified recordkeeping and reporting requirements;

Are not subject to the requirements of Chapter 35 of title 44, United States Code, including 44 U.S.C. 3705.

Subpart J—Uniform Procedures

SOURCE: 46 FR 45911, Sept. 15, 1981, unless otherwise noted.

§ 970.1000 Applicability.

The regulations of this subpart govern the following proceedings conducted by NOAA under this part.

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of license;

(2) All proposed terms, conditions and restrictions on a license; and

(3) All proposals to significantly modify a license;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee to any term, condition or restriction in a license, or to modification thereto, where the licensee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee for review of:

(1) A proposed denial of issuance or transfer of a license; or

(2) A proposed suspension or modification of particular activities under a

license after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with Subpart C of this part to determine priority of right among pre-enactment explorers.

§ 970.1001 Formal hearing procedures.

(a) *General.* (1) All hearings described in paragraph (a) of § 970.1000 are governed by 5 U.S.C. sections 554 through 557 and the procedures contained in this section.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provision of this part he will provide for a formal hearing.

(c) *Assignment of administrative law judge.* Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the NOAA Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(d) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the FEDERAL REGISTER at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant or licensee, and to all persons who submitted written comments upon the action in question, testified at any prior informal hearing on the action or filed a request for the formal hearing under this part.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(e) *Powers and duties of the administrative law judge.* Judges have all the powers and duties necessary to preside over the parties and proceedings and to conduct fair and impartial hearings, as specified by 5 U.S.C 554 through 557 and this section, including the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation;

(3) Hold conferences in accordance with paragraph (i) of this section for the simplification or, if appropriate, settlement of the issues by consent of the parties or to otherwise expedite the proceedings;

(4) Administer oaths and affirmations;

(5) To the extent authorized by law, rule upon requests for, and issue, subpoenas for the attendance and testimony of witnesses and the production of books, records, and other evidence upon proper application under paragraph (p) of this section;

(6) Rule on discovery requests, establish discovery schedules, and take or cause depositions or interrogatories to be taken;

(7) Rule on requests for protective orders to protect persons in the discov-

ery process from undue burden or expense, or for other good cause;

(8) Require, at or prior to any hearing, the submission and exchange of evidence;

(9) Rule upon offers of proof and evidence and receive, exclude and limit evidence as set forth in paragraph (j)(3) of this section;

(10) Introduce documentary or other evidence into the record;

(11) Examine and cross-examine witnesses;

(12) Consider and rule upon motions, procedural requests, and similar matters;

(13) Take such measures as may be necessary, such as sealing of portions of the hearing record, to protect classified information, proprietary and privileged information and information consisting of trade secrets and confidential commercial and financial information;

(14) Schedule the time and place of the hearing, or the hearing conference, continue the hearing from day-to-day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the recommended or initial decision, all in the judge's discretion, having due regard for the covenience and necessity of the parties;

(15) Establish rules, consistent with applicable law, for media coverage of the proceedings and for the closure of the hearing in the interest of justice;

(16) Strike testimony of a witness refusing to answer a question ruled to be proper;

(17) Make and file decisions in conformity with this subpart; and

(18) Take any action authorized by the rules in this section or in conformance with 5 U.S.C. 554 through 557.

HEARINGS

(f) *Participation.* (1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant or licensee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) of this section, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the 10 days but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within 10 days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the 10 day rule for good cause, such as if the interested person, making this request after the expiration of the 10 days, shows that he lacked actual notice of the formal hearing during the 10 days, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) of this section.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(h) *Obligation to raise issues before a formal hearing is held.* Whenever a formal hearing is conducted pursuant to an objection to any term, condition, or restriction in a license in accordance with section 105 (b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not submitted to the administrative record on the action unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process.

(i) *Conferences.* (1) At any time the judge considers appropriate, he may upon his own motion or the motion of any party or interested person, direct the parties and interested persons, or their attorneys, to meet (in person, by telephone conference call, or otherwise) in a conference to consider:

(i) Simplification of the issues;

(ii) Settlements, in appropriate cases;

(iii) Stipulations and admissions of fact, and contents and authenticity of documents;

(iv) Exchange of evidence, witness lists, and summaries of expected testimony;

(v) Limitation of the number of witnesses; and

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record will show how the matters were disposed of by order and by agreement in such conferences.

(j) *Appearance and presentation of evidence.* (1) A party or interested person may appear at a hearing under this section in person, by attorney, or by other representative.

(2) Absent a showing of good cause, failure of a party to appear at a hearing:

(i) Constitutes waiver of the right to a hearing under this section;

(ii) Constitutes consent of the party to the making of a decision on the record of the hearing; but

(iii) Will not be deemed to be a waiver of the right to be served with a copy of the judge's decision.

(3) *Evidence.* (i) The order of presentation of evidence will be at the judge's discretion.

(ii) The testimony of witnesses will be upon oath or affirmation administered by the judge and will be subject to such cross-examination as may be required for a full and true disclosure of the facts. The formal rules of evidence do not apply, but the judge will exclude evidence which is immaterial, irrelevant, nonprobative, or unduly repetitious. Hearsay evidence is not inadmissable as such.

(iii) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party must state briefly the grounds for such objections. Rulings on each objection will appear in the record.

(iv) Formal exception to an adverse ruling is not required.

(v) At any time during the proceedings, the judge may require a party or a witness to state his position on any issue, and theory in support of such position.

(vi) Upon the failure of a party or interested person to effect the appearance of a witness or the production of a document or other evidence ruled relevant and necessary to the proceeding, the judge may take appropriate action as authorized by law.

(4) *Authority of judge to expedite adjudication.* To prevent unnecessary delays or an unnecessarily large record, the judge may:

(i) Limit the number of witnesses whose testimony may be cumulative;

(ii) Strike argumentative, repetitious, cumulative, immaterial, nonprobative or irrelevant evidence;

(iii) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(iv) Impose such time limitations on arguments as the judge determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

(5) *Official notice.* Official notice may be taken of any matter not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Commerce, by reason of its functions, is deemed to be expert, or of a nonprivileged document required by law to be filed with, or prepared or published by a government body, or of any reasonably available public document. The parties will be given adequate notice, at the hearing or otherwise before the judge's decision, of the matters so noticed, and upon timely request by a party will be given reasonable opportunity to show the contrary.

(6) *Argument.* At the close of the formal hearing, each party shall be given the opportunity to submit written arguments on the issues before the judge.

(7) *Record.* (i) The judge or the Administrator will arrange for a verbatim tape or other record of any oral hearing proceedings. An official transcript will be prepared and copies may be obtained upon written request filed with the reporter and upon payment of the fees at the rate provided in the agreement with the reporter.

(ii) The official transcript, exhibits, briefs, requests, and other documents and papers filed will constitute the exclusive record for the decision on the issues concerning which the hearing was held.

(iii) The record developed in any hearing held pursuant to section 116(b) of the Act will be part of the basis for the Administrator's decision to take any action referred to in section 116(a) of the Act.

(k) *Interlocutory appeals.* (1) At the request of a party or on the judge's own motion, the judge may certify to the Administrator for review a ruling which does not finally dispose of the proceeding if the judge determines that such a ruling involves a controlling question of law and that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(2) Upon certification by the judge of an interlocutory ruling for review, the Administrator will expeditiously decide the matter, taking into account any briefs in this respect filed by the parties within 10 days after certification. The Administrator's order on an interlocutory appeal will not be considered the final decision of the Administrator except by operation of other provisions in this section.

(3) No interlocutory appeal will lie as to any ruling not certified to the Administrator by the judge. Objections to non-certified rulings will be a part of the record and will be subject to review at the same time and in the same manner as the Administrator's review of the judge's initial or recommended decision.

(l) *Decisions*—(1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within 20 days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within 10 days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* As soon as practicable, but normally not later than 90 days after the record is closed, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material issues of law, and a recommendation as to the appropriate action to be

taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

MISCELLANEOUS

(m) *Motions and requests.* Motions or requests must be filed in writing with the judge or must be stated orally and made part of the hearing record. Each motion or request must state the particular order, ruling or action desired, and the grounds therefor.

(n) *Witnesses and fees.* Witnesses subpoenaed will be paid the same fees and mileage, and in the same manner, as are paid for like services in the District Court of the United States for the district in which the hearing is located.

(o) *Depositions.* (1) Any party desiring to take the deposition of a witness must make application in writing to the judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and mailing address of the person before whom the deposition is requested to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(2) Depositions may be taken orally or upon written interrogatories before any person designated by the judge.

(3) Such notice as the judge may order will be given for the taking of a deposition, but this ordinarily will not be less than 5 days' written notice when the deposition is to be taken within the United States and ordinarily will not be less than 20 days' written notice when the deposition is to be taken elsewhere.

(4) Each witness testifying upon deposition will be sworn and any party will have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, will be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the person presiding. Thereafter, the person presiding will deliver or mail a copy of the document to each party. Subject to such objection to the questions and answers as were noted at the time of taking the deposition which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(p) *Extension of time.* The time for the filing of any document under this section may be extended by the judge if:

(1) The request for the extension of time is made before or on the final date allowed for the filing; and

(2) The judge, after giving written or oral notice to and considering the views of all other parties (when practicable), determines that there is good reason for the extension.

(q) *Filing and service of documents.* (1) Whenever the regulations in this subpart or in an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

§ 970.1002 Ex parte communications.

(a) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of *ex parte* matters as authorized by law, upon assignment of a matter to an administrative law judge and until the final decision of the Administrator is effective under these regulations, no *ex parte* communication relevant to the merits of the proceeding shall be made, or knowingly caused to be made:

(1) By the judge or by an agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce; or

(2) By an interested person outside the Department of Commerce to the judge or to any agency employee involved in the decisional process of the proceeding.

(c) The judge may not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate.

(d) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto and the judge, or Administrator, as appropriate, may take action in this respect consistent with this part, the Act, and 5 U.S.C. 556(d) and 557(d).

(e) This section does not apply to communications to or from the attorney representing the Administrator in the proceedings (the agency representative); however, the agency representative may not participate or advise in the initial or recommended decision of the judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the judge may not consult any person or party on the substance of the matter in issue unless on notice and opportunity for all parties to participate.

(f) Paragraphs (b) through (d) of this section do not apply to communications concerning national defense or foreign policy matters. Any such Ex Parte communications on those subjects to or from an agency employee or from employees of the United States Government involving intergovernmental negotiations are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

Ex Parte communications subject to this paragraph shall be made a part of the public record to the extent that they do not include information classified pursuant to Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

[46 FR 45911, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

Subpart K—Enforcement

SOURCE: 46 FR 45915, Sept. 15, 1981, unless otherwise noted.

§ 970.1100 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license, or suspend or modify activities under a license, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee under the Act to monitor compliance and environmental effects of activities under the license.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against a alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 970.1101 through 970.1102), and license sanctions (§ 970.1103); the remission or mitigation of forfeitures (§ 970.1104); observers (§ 970.1105); protection of certain information related to enforcement (§ 970.1106); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§ 970.1107).

(b) *Filing and service of documents.* (1) Filing and service of documents required by this subpart shall be in accordance with § 970.1001(r). The method for computing time periods set forth in § 970.1001(r) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within 10 days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by § 970.1101(b) or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 970.1101 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

[46 FR 61652, Dec. 18, 1981]

§ 970.1102 Hearing and appeal procedures.

Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

[46 FR 61652, Dec. 18, 1981]

§ 970.1103 License sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license issued under the Act, or the suspension or modification of any particular activity or activities under a license, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license issued under the Act, or any particular activity or activities under such a license, if the licensee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license issued under the Act:

(1) Revoke the license;

(2) Suspend the license, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Suspend or modify any activity under the license, such as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NOS) setting forth the sanction to be imposed and the basis therefor. The NOS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee under paragraph (e)(1) of this section to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective under paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NOS will be served personally or by registered or certified mail, return receipt requested, on the licensee. The Administrator will also publish in the FEDERAL REGISTER a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NOS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse effect on the environment; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4) of this section, the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NOS will be accompanied by a copy of regulations governing civil enforcement procedures, this subpart and the applicable provisions of Subpart J of this part.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NOS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee can correct. Such determination, and the basis therefor, will be set forth in the NOS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee can correct, the Administrator will allow the licensee a reasonable period of time, up to 180 days from the date of the NOS, to correct the deficiency. The NOS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee may, within the time period prescribed by the Administrator under paragraph (e)(2) of this section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, it will be considered denied.

(4) When the licensee believes that the deficiency has been corrected, the

licensee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for a hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee has 30 days from receipt of the NOS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing of which the licensee has been given notice and has had an opportunity to participate.

(2) If the licensee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOS. The request shall either attach a copy of the relevant NOS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NOS and any response thereto to the NOAA Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the respondent, the affected licensee, and the owner of an affected vessel (if the licensee or owner is not the respondent), with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleadings and other documents shall be filed directly with the NOAA Office of Administrative Law Judges, and a copy shall be served on the opposing party (respondent or agency representative).

(2) The hearing and appeal procedures in 15 CFR Part 904, Subpart C to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

[46 FR 45915, Sept. 15, 1981, as amended at 46 FR 61652, Dec. 18, 1981]

§ 970.1104 Remission of forfeitures.

Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

[50 FR 12785, Apr. 1, 1985]

§ 970.1105 Observers.

(a) *Purpose of observers.* Each licensee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board and accompany any vessel used by the licensee in exploration activities (hereafter referred to in this section as a "vessel"), for the purposes of observing and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's activities under the license.

(b) *Notice to licensee.* (1) The Administrator may notify a licensee that the Administrator plans to place an observer aboard a vessel.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator may include, among other things.

(i) The name of the observer, if known at the time the notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel.

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring; and

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(iv) Information concerning the monitoring equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Licensee's response.* Upon request by the Administrator, a licensee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next exploration voyager, or, if the vessel is at sea, suggesting a time and methods for transporting the observer to the vessel.

(d) *Duties of licensee, owner or operator.* Each licensee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necesssary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(e) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be carried out in a manner that minimizes interference with the licensee's activities under the license.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(f) *Non-interference with observer.* Licensees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(g) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee an opportunity:

(1) To review those parts of the observer's reports which may contain proprietary information; and

(2) To request confidential treatment of such information under § 970.902.

§ 970.1106 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in exploration will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under § 970.1101(e)(13) or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purposes of the Act.

§ 970.1107 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under section 114 of the Act against any person for alleged violation of the Act, or any regulation, or license term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Actions against the Administrator.* (1) No civil action may be filed in a United States District Court under section 114 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or license believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

Subparts L-W—[Reserved]

Subpart X—Pre-enactment Exploration

§ 970.2401 Definitions.

(a) "Engage in exploration" means:

(1) To cause or authorize exploration to occur, including but not limited to a person's actions as a sponsor, principal, or purchaser of exploration services; or

(2) To conduct exploration on behalf of a person described in paragraph (a)(1) of this section.

[45 FR 76662, Nov. 20, 1980, as amended at 47 FR 5966, Feb. 9, 1982]

§ 970.2402 Notice of pre-enactment exploration.

(a) *General.* NOAA encourages any United States citizen who engaged in exploration for deep seabed hard mineral resources before June 28, 1980, to file not later than February 1, 1981, a written notice with the Administrator, in care of: The Director, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Department of Commerce, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, DC 20235. Such notice shall not constitute an application for a license or permit and shall not confer or confirm any priority of right to any site.

(b) *Content of pre-enactment exploration Notice.* If a notice of exploration commenced prior to June 28, 1980, is filed pursuant to paragraph (a) it should be in writing and include the following:

(1) Names, addresses, and telephone numbers of the United States citizens responsible for exploration operations to whom notices and orders are to be delivered;

(2) A description of the citizen or citizens engaging in such exploration including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation of state in which the partnership or other business entity is registered;

(iii) The name of registered agent and places of business;

(iv) Certification of essential and non-proprietary provisions in articles of incorporation, charter, or articles of association; and

(v) Membership of the association, partnership, or joint venture, including information about the participation of partners and joint venturers, and/or ownership of stock.

(3) A general description of the exploration activities conducted prior to June 28, 1980, including:

(i) The approximate date that the citizen, or predecessor in interest, commenced exploration activities;

(ii) A general estimate of expenditures made on the exploration program prior to June 28, 1980;

(iii) A statement of whether the citizen intends to file an application for an exploration license pursuant to section 101(b)(1)(A) of the Act after NOAA issues regulations implementing section 103(a) of the Act; and

(iv) A statement of whether the citizen intends to continue to engage in exploration as allowed by section 101(b) of the Act, pending a final determination on his application for an exploration license.

(c) *Exclusion of location information.* The information submitted in the notice of pre-enactment exploration required by this section shall *not* include the location of past or future exploration or prospective mine sites.

[45 FR 76662, Nov. 20, 1980]

Subpart Y—Pre-license Exploration

SOURCE: 45 FR 76662, Nov. 20, 1980, unless otherwise noted.

§ 970.2501 Notice of pre-license exploration voyages.

(a) *General.* Any United States citizen who schedules an exploration voyage to begin after November 20, 1980 shall file written notice with the Administrator which sets out:

(1) The name, address and telephone number of the citizen;

(2) The anticipated date of commencement of the voyage and its planned duration;

(3) The exploration activities to be carried out on the voyage, including a general description of the equipment and methods to be used, and an estimate of the anticipated extent of seabed disturbance and effluent discharge; and

(4) If the U.S. citizen has not filed a notice of pre-enactment exploration in accordance with § 970.2402, the information specified in § 970.2402(b).

(b) *When and where to file Notice of future exploration*—(1) *When.* (i) Except as allowed in paragraph (b)(2) of this section, the notice required by paragraph (a) of this section must be filed not later than 45 days prior to the date on which the exploration voyage is scheduled to begin.

(ii) With respect to filing of the information referred to in paragraph (a)(4) of this section, the filing dates specified in paragraph (b) of this section shall prevail over the date specified in § 970.2402(a).

(2) *Exception.* If an exploration voyage is scheduled to begin before January 5, 1981, the notice required by paragraph (a) of this section must be filed on or before December 22, 1980.

(3) *Where.* The notice required by paragraph (a) of this section must be filed in writing with the Administrator, at the address specified in § 970.2402(a) of this part.

§ 970.2502 Post voyage report.

Within 30 days of the conclusion of each exploration voyage, the United States citizen engaging in the voyage shall submit to NOAA a report containing any environmental data or information obtained during that voyage.

§ 970.2503 Suspension of exploration activities.

(a) The Administrator may issue an emergency order, either in writing or orally with written confirmation, requiring the immediate suspension of exploration activities or any particular exploration activity when, in his judgment, immediate suspension of such activity or activities is necessary to prevent a significant adverse effect on the environment. Upon receipt of notice of the emergency order, the United States citizen engaged in the exploration shall immediately cease the activity that is the subject of the emergency order. During any suspension NOAA will consult with the citizen engaged in the activity suspended concerning appropriate measures to remove the cause of suspension. A suspension may be rescinded at any time by written notice from the Administrator upon presentation of satisfactory evidence by the citizen that the activity will no longer threaten a significant adverse effect on the environment.

Subpart Z—Miscellaneous

§ 970.2601 Additional information.

Any United States citizen filing notice under § 970.2402 or § 970.2501 of this part shall provide such additional information as the Administrator may require as necessary and appropriate to implement section 101 of the Act.

[45 FR 76662, Nov. 20, 1980]

PART 981—OCEAN THERMAL ENERGY CONVERSION LICENSING PROGRAM

Subpart A—General Program Requirements

Sec.
981.10 What are the Ocean Thermal Energy Conversion Program Regulations?
981.20 Purpose of the OTEC licensing regulations.
981.30 Scope of the OTEC licensing regulations.
981.40 Definitions.
981.50 Who must apply for an OTEC license (and who does not need one)?
981.60 Federal applications.
981.70 Pre-application consultation.
981.80 How to apply for an OTEC license.
981.90 Provision of additional information.
981.100 Confidentiality of information.
981.110 Amendment of an application.
981.120 Termination of processing and withdrawal of an application.
981.130 Application fees.
981.140 Clerk, docket, and record of application proceeding.
981.150 Public inspection and copying.
981.155 Compliance with Paperwork Reduction Act.
981.158 Computation of time periods for filing documents.

Subpart B—Information To Be Submitted With Application

981.160 Why is this information required?
981.170 Request for use of the Consolidated Application Review (CAR) process.
981.180 Information about the applicant and its affiliates.
981.190 General information on the OTEC facility or plantship.
981.200 Requested duration of license.
981.210 Compliance with other Federal laws and regulations.
981.220 OTEC site information.
981.230 Operational information.
981.240 Design information.
981.250 Construction and deployment procedures.
981.260 Environmental information.

Subpart C—License Application Review Procedures

981.270 What is the license application review process?
981.280 NOAA review for completeness.
981.290 Publication of notice of application; contents of notice; call for additional applications for OTEC facilities.
981.300 Other Federal agencies and departments.
981.310 EIS for each application.
981.320 Antitrust review.
981.330 Adjacent coastal States.
981.340 Informal public hearings on license application.
981.350 Formal hearings on material factual issues.
981.360 Timely conclusion of public hearings.
981.370 Timely issuance of draft and final EIS's on the application.

Sec.
981.380 Steps in the voluntary Consolidated Application Review (CAR) process.
981.390 Voluntary nature of the CAR process.
981.400 Effect of Joint Agreement on authorities.
981.410 Request for designation of Federal CAR team members.
981.420 Request for designation of State and local CAR team members.
981.430 Development of Joint Agreement by CAR team.
981.440 Inter-agency CAR team meeting.
981.450 Implementation of the CAR schedule.

Subpart D—Criteria for Approval or Denial of Application and Establishment of License Terms and Conditions; Renewal, Transfer, Modification, Revision, Suspension, Revocation, Termination, Relinquishment, and Surrender

981.460 Timely approval or denial of application for a license and issuance of a license.
981.470 Criteria for approval or denial.
981.480 Multiple applications.
981.490 Condition precedent to issuance of license: Compliance with conditions and prior approval of changes.
981.500 Contents of license.
981.510 Duration of licenses and renewals.
981.520 Terms and conditions of a license.
981.525 Review, modification and revision of license terms and conditions.
981.530 Renewal of a license.
981.540 Transfer of license.
981.550 Suspension, revocation, termination, relinquishment or surrender of a license.

Subpart E—Formal Hearing Procedures

981.560 Formal hearing procedures.
981.570 Ex parte communications.

Subpart F—Enforcement Procedures

981.580 General.
981.590 Assessment procedure.
981.600 Hearing and appeal procedures.
981.610 License sanctions.
981.620 Compliance orders.
981.630 Observers.
981.640 Advance notice of civil actions.

Sec.

Subpart G—Upper Limits on the Number or Total Capacity of OTEC Facilities and Plantships To Be Licensed Under This Part—[Reserved]

Subpart H—OTEC Site Evaluation and Preconstruction Testing Regulations—[Reserved]

Subpart I—Procedures for Mediation of Disputes Among Licensees Regarding Interference Between OTEC Facilities or Plantships—[Reserved]

AUTHORITY: Ocean Thermal Energy Conversion Act of 1980, Pub. L. 96-320, 94 Stat. 974 (42 U.S.C. 9101, *et seq.*).

SOURCE: 46 FR 39394, July 31, 1981, unless otherwise noted.

Subpart A—General Program Requirements

§ 981.10 What are the Ocean Thermal Energy Conversion Program Regulations?

(a) *Coverage.* These regulations implement NOAA's responsibilities under the Ocean Thermal Energy Conversion Act of 1980. The regulations provide the procedures and information necessary to apply to NOAA for a license for the ownership, construction, and operation of ocean thermal energy conversion (OTEC) facilities and plantships. They also establish a voluntary consolidated process for review of license applications by NOAA and other Federal, State, and local government entities; state the criteria which will be used for issuance or denial of a license; prescribe criteria for establishing license terms and conditions; prescribe procedures for enforcement of the Act and this part, and for renewal, transfer, modification, revision, suspension, revocation, termination, relinquishment, or surrender of a license.

§ 981.20 Purpose of the OTEC licensing regulations.

The regulations in this part carry out the purposes of the Act, which include:

(a) Authorize and regulate the construction, location, ownership, and operation of OTEC facilities connected to the United States by pipeline or cable, or located in the territorial seas of the United States, consistent with the Convention on the High Seas, and general principles of international law;

(b) Authorize and regulate the construction, location, ownership, and operation of OTEC plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(c) Authorize and regulate the construction, location, ownership, and operation of OTEC plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

(d) Establish a legal regime which will permit and encourage the development of OTEC as a commercial energy technology;

(e) Provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such OTEC facilities or plantships;

(f) Protect the interests of the United States in the location, construction, and operation of OTEC facilities and plantships; and

(g) Protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

§ 981.30 Scope of the OTEC licensing regulations.

(a) *Subpart A* of Part 981 contains definitions and basic procedures related to any application for a license for an OTEC facility or plantship, including application fees and procedures for termination or withdrawal of an application.

(b) *Subpart B* of Part 981 prescribes the information which must be included in a license application to enable the Administrator to make the determinations required by the Act as conditions precedent to issuance or denial of an OTEC license.

(c) *Subpart C* of Part 981 prescribes license application review procedures including the Consolidated Application Review (CAR) process which will be used by NOAA and, on a voluntary basis, by the applicant and those other Federal, State, and local government entities with authority over any aspect of the OTEC operations proposed in an application.

(d) *Subpart D* of Part 981 contains the criteria upon which the Administrator will base the decision to issue or deny an OTEC license, including the criteria which will be used to decide among multiple applications for the same designated application area. This Subpart also prescribes criteria for establishing license terms and conditions, and for renewal, transfer, modification, revision, suspension, revocation, and termination of a license.

(e) *Subpart E* of Part 981 prescribes the procedures which will be used by the Administrator to conduct any formal hearings under this part.

(f) *Subpart F* of Part 981 sets forth the administrative procedures which will be used for enforcement proceedings under the Act and this part.

§ 981.40 Definitions.

For the purposes of this part, the following terms have the following meanings:

Act means the Ocean Thermal Energy Conversion Act of 1980 (Pub. L. 96-320; 94 Stat. 974; 42 U.S.C. 9101 *et seq.*);

Adjacent coastal State means any coastal State which is required to be designated as such by § 981.330(a) of this part or is designated as such by the Administrator in accordance with § 981.330(b) of this part;

Administrator means the Administrator of NOAA or a person to whom appropriate authority has been delegated;

Affiliate means any person, (a) in which the applicant or licensee owns or controls more than 5% interest, (b) which owns or controls more than 5% interest in the applicant or licensee, or (c) which is under common ownership or control with the applicant or licensee;

Antitrust laws include the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, and sections 73 and 74 of the Act of August 27, 1894, as amended;

Application means any application submitted under this part, (a) for issuance of a license for the ownership, construction, or operation of an OTEC facility or plantship; (b) for transfer or renewal of any such license; or (c) for any substantial change in any of the terms and conditions of any such license;

CAR means the Consolidated Application Review process described in subpart C of this part;

Cleanup means removal of pollutants from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, public and private property, shorelines, and beaches;

Coastal State means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

Construction means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an OTEC facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an OTEC facility or plantship;

Controlling interest means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

Designated application area means the projected area or areas in which the OTEC activities of the applicant might impact so as to significantly degrade the operation of another OTEC facility or plantship, and in which the operation of another OTEC facility or plantship might impact so as to significantly degrade the OTEC operation proposed by the applicant;

EIS means an environmental impact statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

Facility means an OTEC facility;

Governor means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this part;

High seas means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

Licensee means the holder of a valid license for the ownership, construction, or operation of an OTEC facility or plantship that was issued, transferred, or renewed pursuant to this part;

Major component means any component of an OTEC facility or plantship with a value exceeding $500,000;

NOAA means the National Oceanic and Atmospheric Administration;

OTEC means ocean thermal energy conversion;

OTEC facility means any facility which is standing or moored in or beyond the territorial sea of the United States and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the high-water mark. If part of the OTEC facility is built on land, the definition includes that portion of the warm water intake structure, cold water intake structure, effluent discharge structure, and any other parts of the facility, located seaward of the high-water mark;

OTEC plantship means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form or energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

Person means any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

Plantship means an OTEC plantship;

Pollutant means (a) oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes; (b) dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, temperature change, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water; and (c) hazardous substances as that term is defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510);

Pollutant discharge means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants;

Significant contract means any contract in an amount exceeding five hundred thousand dollars ($500,000);

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession over which the United States has jurisdiction;

Test platform means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at-sea operation in order to test or evaluate the operation of components or all of an OTEC system and which will not operate as an OTEC facility or plantship after the conclusion of such tests or evaluation; and

United States citizen means (a) any individual who is a citizen of the United States by law, birth, or naturalization; (b) any Federal, State, or local government in the United States, or any entity of any such government; or (c) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

§ 981.50 Who must apply for an OTEC license (and who does not need one)?

(a) *OTEC facilities.* No person may engage in the ownership, construction, or operation of an OTEC facility which is:

(1) Documented under the laws of the United States; or

(2) Located in the territorial sea of the United States; or

(3) Connected to any State by pipeline or cable;

except in accordance with a license issued pursuant to this part.

(b) *OTEC plantships.* No citizen of the United States may engage in the ownership, construction or operation of an OTEC plantship except in accordance with a license issued pursuant ot this part, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this part.

(c) *Activities which do not require a license.* The requirements of this section to obtain an OTEC license do not apply to the following activities:

(1) Ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration

project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy, for so long as the Secretary of Energy maintains such designation in effect. The Secretary of Energy, after consultation with the Administrator, will require such demonstration projects to abide by as many of the substantive requirements of Title I of the Act as he deems to be practicable without damaging the nature of or unduly delaying such projects;

(2) Ownership, construction, or operation of any test platform which will not operate as an OTEC facility or plantship after conclusion of the testing period;

(3) OTEC construction activities which are conducted on land or in a shipyard; and

(4) Manufacture or supplying of components for construction of an OTEC facility or plantship unless such activity takes place seaward of the high-water mark.

§ 981.60 Federal applications.

The application filed with the Administrator constitutes an application for all Federal authorizations required for ownership, construction, and operation of an OTEC facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating and application to the Maritime Administration for financial assistance under Title XI of the Merchant Marine Act of 1936. Procedures for review of the application by Federal agencies and departments (other than the Coast Guard) are set forth in Subpart C of this part.

§ 981.70 Pre-application consultation.

(a) *Consultation.* If requested, the Administrator will consult with any prospective applicant to assist the applicant in properly preparing the application and in contacting other Federal and State agencies involved in the application review process to discuss the prospective application.

(b) *Request.* A prospective applicant who wishes a pre-application consultation in accordance with this section should make such request in writing to the Director, Office of Ocean Minerals and Energy, NOAA, Room 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235.

§ 981.80 How to apply for an OTEC license.

(a) *Form.* Each application must be in writing and must include the information specified in Subpart B of this part in the order specified.

(b) *Number of copies.* 45 copies of each application must be submitted.

(c) *Where to file the application and all related documents.* Applications and all related documents shall be filed with the Administrator of NOAA, in care of the Director, NOAA Office of Ocean Minerals and Energy, Room 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235.

(d) *Signature*—(1) *Who.* Each application for an OTEC license submitted under this part shall be signed by the applicant as follows:

(i) *For a corporation:* By a principal executive officer of at least the level of vice-president;

(ii) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively;

(iii) *For a Federal, State, or local government in the United States, or any entity of any such government:* by either a principal executive officer or ranking elected official; or

(iv) *For an association or other entity:* by a principal executive officer.

(2) *Verification.* Each application shall contain a statement at the end of the application subscribed and sworn to before a notary public that the individual who signed the application has read it and that its contents are true to the individual's best knowledge and belief.

§ 981.90 Provision of additional information.

(a) *Supplemental documents.* The Administrator may require, by written notice to the applicant, that the applicant file as a supplement to the application any analysis, explanation or detailing of information in the application or any other information determined by the Administrator to be required to review or process the application.

(b) *Other Federal and State requests.* Any Federal or adjacent coastal State department or agency may file with the Administrator a request or recommendation for further information related to its authorization(s) required for ownership, construction, or operation of the proposed OTEC facility or plantship. Requests and recommendations received by the Administrator within 30 days after notice of the initial application has been published in the FEDERAL REGISTER will be fully considered before any final determination is made to require additional information of the applicant. Requests and recommendations must contain a brief statement of the need for additional information, including the nature of any safety, health, environmental, economic, or other legitimate concerns.

(c) *Time limits.* In exercising the authority to require supplemental information under this section, the Administrator may fix a reasonable time by which an applicant must meet the requirement. If an application states that required information is not yet available but will be furnished at a later date, the Administrator may specify a reasonable time by which the information must be provided. If any requirement is not met by a time fixed in accordance with this paragraph, the Administrator shall determine whether compliance with the requirement is material to processing of the application within the time deadlines prescribed in Subpart C of this part. If the Administrator determines that an unmet requirement for supplemental information is material, the Administrator may disapprove the application or suspend the application pending a determination that processing can be resumed. The period of any suspension shall not be counted in determining the dates of the deadlines prescribed in Subpart C of this part.

(d) *Copies.* 45 copies of additional information required under this section must be submitted unless the Administrator determines otherwise.

§ 981.100 Confidentiality of information.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part may request that certain information not be subject to public disclosure.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part, which information is considered by him to be a trade secret, or commercial or financial information which is privileged or confidential, may request that the information be given confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of the information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of such information pursuant to paragraph (d) of this section.

(ii) If information is submitted to NOAA without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, NOAA will make such efforts as are administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal and State agencies to which NOAA distributed the information. However, NOAA cannot assure that such efforts will be effective, in light of the prior distribution to Federal and State agencies and the possibility of prior disclosure of the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant or licensee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to NOAA in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(iii) With respect to information submitted as part of an application, forty-five copies of the information for which confidential treatment is requested must be submitted.

(iv) Normally, NOAA will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However on a case-by-case basis the Administrator may decide to make a determination in advance of a request for disclosure where it would facilitate NOAA's obtaining voluntarily-submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment which addresses the issues relevant to a determination whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any such statement submitted will be treated as confidential if so requested by the person requesting confidential treatment. Any such statement for which confidential treatment is requested must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part shall be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested), of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether such person continues to maintain the request for confidential treatment;

(ii) Notify such person of the date (generally, not later than the close of business on the fourth working day after issuance of the notice), by which the person is strongly encouraged to deliver to NOAA a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform such person that by such date as the Administrator specifies (generally, not later than the close of business on the fourth working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to NOAA a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(B) Is strongly encouraged to deliver to NOAA an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator, in such forum as the Administrator deems appropriate (such as by telephone or in an informal conference), such person's arguments against disclosure of the information; and

(iv) Inform such person that the burden is on him to assure that any response to the notice is delivered to NOAA within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all of any statement submitted in response to any notice issued under paragraph (d)(2) of this section will be treated as confidential if so requested by the person submitting the response. Any such response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, or sooner if authorized under paragraph (e) of this section, the Administrator will determine, in consultation with the NOAA Office of General Counsel, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information;

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7)(i) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested), to the person who requested confidential treatment. The notice will state:

(A) The basis for the Administrator's determination;

(B) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(C) That such final agency action may be subject to judicial review under Chapter 7 of Title 5, United States Code; and

(D) That, except as otherwise provided by paragraph (d)(7)(ii) of this section, on the fourth working day after issuance of the notice described in this paragraph (d)(7)(i) of this section the Administrator will make the information available to the person who requested disclosure unless NOAA has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(ii) The disclosure of information described in paragraph (e) of this section will be subject to the additional standards and procedures for disclosure set forth in that paragraph. For example, the notice under paragraph (d)(2) of this section may be omitted, or the time period allowed for response to that notice may be very short, if the Administrator makes an appropriate determination under paragraph (e)(1) of this section that the delay resulting from following the procedures of paragraph (d) would be detrimental to the public health or safety or the environment.

(8) NOAA will keep a record of the date any notice is issued, and of the date any response is received, by NOAA under paragraph (d) of this section.

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if 10 working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Special limitations on disclosure of certain information.* Any information submitted to, reported to, or collected by the Administrator under this part which is exempt from disclosure pursuant to section 552(b)(4) of Title 5, United States Code (the section of the Freedom of Information Act relating to trade secrets and commercial or financial information which is privileged or confidential), will not:

(1) Be publicly disclosed by the Administrator or by any other officer or employee of the United States, unless the Administrator has:

(i) Determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

(ii) Notified the person who provided the information 10 working days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

(2) Be otherwise disclosed except:

(i)(A) To other Federal and adjacent coastal State government departments and agencies for official use,

(B) To any committee of the Congress of appropriate jurisdiction, or,

(C) Pursuant to court order, and

(ii) When the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(f) *Direct submissions of confidential information.* If any person (for example, an affiliate) has reason to believe that it would be prejudiced by furnishing information required from it to the applicant or licensee, such person may file the required information directly with NOAA. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(g) *Protection of confidential information transmitted by NOAA to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by NOAA to other Federal and adjacent coastal State government departments and agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal or State department or agency maintain the information in confidence in accordance with applicable law and any applicable protective agreement entered into by the Administrator and the Federal or State department or agency receiving the information;

(2) A request that the other Federal or State department or agency notify the Administrator immediately upon receipt of any request for disclosure of the information;

(3) A notification that information which is exempt from disclosure under 5 U.S.C. 552(b)(4) (the section of the Freedom of Information Act relating to trade secrets and commercial or financial information which is privileged or confidential) shall not be disclosed except in the limited circumstances provided by section 112 of the Act, and paragraphs (d) and (e) of this section; and

(4) A request that all copies of the information be returned to NOAA for secure storage or disposal promptly after the Federal or State department or agency determines that it no longer needs the information for its official use.

§ 981.110 Amendment of an application.

(a) *Requirement to amend.* If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is terminated, the applicant must promptly file an amendment furnishing the corrected or additional information. Forty-five copies of the amendment must be submitted to the Administrator.

(b) *Effect of amendment.* If the administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Suspend the time deadlines prescribed in Subpart C of this part for processing of an application pending review of the amendment; or

(2) Require the applicant to commence a new license application proceeding.

§ 981.120 Termination of processing and withdrawal of an application.

(a) An applicant may withdraw an application at any time before the license application proceeding is terminated by delivering or mailing written notice of withdrawal to the Administrator.

(b) The Administrator will terminate a proceeding if:

(1) All applications are withdrawn before the decision approving or denying them is issued; or

(2) The applicant after written notice by the Administrator pursuant to § 981.90 of this part does not provide adequate further information to complete the application within the time fixed in the written notice, and the Administrator elects to disapprove the application under § 981.90(c) of this part.

§ 981.130 Application fees.

(a) *Schedule of payment.* The applicant must submit the application fee in accordance with the following schedule:

(1) A nonrefundable payment of one hundred thousand dollars ($100,000.00) must be submitted with each application for issuance of a license.

(2) An additional payment of one hundred thousand dollars ($100,000.00) must be submitted not later than the date of the first public hearing held by NOAA on the license application in accordance with § 981.340 of this part.

(3) A final payment of fifty thousand dollars ($50,000.00) must be submitted not later than 45 days after notice of completion of public hearings on the application is published in the FEDERAL REGISTER in accordance with § 981.360 of this part. The Administrator will not issue a license under this part unless the entire application fee has been paid.

(b) *Effect of withdrawal or termination of application.* Withdrawal of the application by the applicant or termination of the application proceedings by the Administrator will reduce the application fee due to NOAA as follows:

(1) If the application is withdrawn or terminated prior to publication in the FEDERAL REGISTER of notice of receipt of an application which appears to be complete in accordance with § 981.290 of this part, the applicant will not be liable for the additional payment of one hundred thousand dollars ($100,000.00).

(2) If the application is withdrawn or terminated before the date of the first public hearing held by NOAA on the application in accordance with § 981.340 of this part, the applicant will not be liable for the final payment of fifty thousand dollars ($50,000.00).

(c) *Payment.* The fees assessed under this section must be made payable to the "National Oceanic and Atmospheric Administration, U.S. Department of Commerce."

§ 981.140 Clerk, docket, and record of application proceeding.

(a) The mailing address for the clerk in each license application proceeding is: OTEC Docket Clerk, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Room 410, Page I Building, 2001 Wisconsin Ave., NW., Washington, DC 20235.

(b) The clerk will maintain a docket and the record for each license application proceeding. The docket will list each document in the record. The record will contain all documents filed or issued in the proceeding that the clerk has received and any other documents in the proceeding that are listed on the docket in accordance with this part.

(c) Comments submitted by Federal agencies and departments on each licensing proceeding will be listed on the docket when they are received. The draft and final environmental impact statements prepared in accordance with § 981.310 of this part will be listed on the docket when they are transmitted to the Environmental Protection Agency.

§ 981.150 Public inspection and copying.

(a) A copy of each application, except information for which confidential treatment is requested (for example, as trade secrets or commercial or financial information which is privileged or confidential), will be available for public inspection and copying at:

(1) NOAA, Office of Ocean Minerals and Energy, Room 410, Page I Building, 2001 Wisconsin Ave., NW., Washington, DC 20235; and

(2) At least one location in each designated adjacent coastal state. The FEDERAL REGISTER notice published under § 981.290, or equivalent public notice, will announce the location.

(b)(1) The Administrator will designate a custodian of all information for which confidential treatment is requested under § 981.100 of this part. The custodian will keep a record of all persons known to have custody of any copy or copies of information which is given confidential treatment.

(2) The custodian will not make public for inspection information for which confidential treatment is requested nor otherwise disclose such information unless the Administrator, after consultation with the NOAA Office of General Counsel, is of the opinion that the applicable requirements of § 981.100 of this part have been satisfied.

§ 981.155 Compliance with Paperwork Reduction Act.

In accordance with 44 U.S.C. 3506(c)(5) and 3512, NOAA hereby informs affected persons that the requests for information under this part requiring:

(a) Submission of specified information with applications; and

(b) Compliance with specified recordkeeping and reporting requirements,

are not subject to the requirements of Chapter 35 of Title 44, United States Code, including 44 U.S.C. 3507.

§ 981.158 Computation of time periods for filing documents.

Saturdays, Sundays and Federal government holidays will be included in computing the time period allowed for filing any document under this part, but when such time period expires on such a day, such time period will be extended to include the next following Federal government work day. Also, with respect to documents filed with the Federal government, filing periods expire at the close of business for the office specified on the day specified.

Subpart B—Information To Be Submitted With Application

§ 981.160 Why is this information required?

(a) *Information for NOAA.* The Act requires the Administrator to make a number of factual determinations with respect to issuance of a license. This subpart prescribes the information which the applicant must provide with the application. If additional information later becomes necessary to enable the Administrator to make those determinations, the Administrator will use the procedures in § 981.90 of this part to obtain it from the applicant.

(b) *Information for other Federal agencies and departments.* The Act requires the Administrator not to issue a license if it is determined that the applicant cannot or will not comply with applicable laws and regulations. This Subpart prescribes information which the applicant must provide with the application to enable the Administrator to make that determination. If additional information later becomes necessary to complete the application proceeding, the Administrator will use the procedures in § 981.90 of this part to obtain it from the applicant.

§ 981.170 Request for use of the Consolidated Application Review (CAR) process.

(a) *Request.* If the applicant wishes to have the CAR process used the application shall so indicate.

(b) *CAR team representative.* If the applicant requests use of the CAR process, the applicant shall designate a representative to the CAR team in his application.

§ 981.180 Information about the applicant and its affiliates.

(a) *General.* The following information on the applicant and its affiliates shall be provided by the applicant with the application:

(1) The name, mailing address, telephone number, citizenship, and the ownership interest in the applicant and its affiliates, of each person having any controlling interest in the applicant or its affiliates or any ownership interest in the applicant or its affiliates of greater than 5 per centum; and

(2) The name, address, and citizenship of any person with whom the applicant and its affiliates have made, or propose to make, a significant contract for the construction or operation of the OTEC facility or plantship, or for any major component of the OTEC facility or plantship, and a copy of such contract.

(b) *Proof of citizenship and authority.* (1) If the applicant is a partnership or sole proprietorship, an affidavit from each partner or the proprietor, respectively, stating that the individual is a citizen of the United States of America.

(2) If the applicant is a corporation, one copy of its charter or instrument by which the corporation is formed and organized under general corporation laws, certified by the Secretary of State or other appropriate authority of the State in which incorporated, a copy of its by-laws certified by its Secretary or an Assistant Secretary, and an affidavit from its president, or holder of similar office, and each member of its board of directors stating the individual's citizenship.

(3) If the applicant is a Federal, State, or local government in the United States, or any entity of any such government, a copy of the laws authorizing the operations detailed in the application.

(4) If the applicant is an association or other entity, a copy of its charter or instrument by which the entity is organized or existing under the laws of the United States, or of any State and an affidavit from its principal executive officer, or holder of similar office, and from each member of its board of directors, stating the individual's citizenship.

(c) *Address for service of documents.* Each application shall contain the name, address and telephone number of a person upon whom service of a notice may be made if a formal hearing is to be held on the application and the name, address and telephone number of a person to whom documents not required to be served may be sent.

(d) *Technical competence.* The following information on the experience of the applicant shall be provided with the application:

(1) A description of the technical competence in offshore operations of the applicant and each consultant, naval architect, or marine engineering firm, if known, that will participate in the design of the OTEC facility or plantship, with particular emphasis on involvement in offshore construction, deployment of large structures, submarine electrical transmission cables, submarine pipelines, seabed foundations, mooring systems, and other experience that would bear on one's qualifications to participate in the construction or operation of an OTEC facility or plantship.

(2) A listing and abstract of each study relied upon by the applicant and a listing and abstract of each ongoing or completed study pertaining to OTEC facilities or plantships conducted by or for the applicant.

(e) *Finances and production.* The following information on the financial situation and production history and plans of the applicant and each of its affiliates shall be provided by the applicant with the application:

(1) The most recent annual financial statement of the applicant and each of its affiliates, including an income statement and a balance sheet, accompanied by an opinion of a certified public accountant;

(2) An estimate of construction costs, by phases;

(3) A detailed estimate of the cost of removal or at sea disposal of all marine components of the OTEC facility or plantship other than electrical transmission cables or pipelines lying below the seabed;

(4) A copy of every agreement or proposal of the applicant and each of its affiliates relating to the ownership, lease, charter, or operation of the OTEC facility or plantship or any of its components and to the financing of the construction or operation of the OTEC facility, plant, or plantship or component thereof, including those relating to production of electricity or other products, capital contributions, loans, guarantees, and commitments therefor; and

(5) From each applicant, and each affiliate of an applicant, engaged in the production of electricity or other product to be produced by the OTEC facility or plantship which is the subject of the application, for each of the three calendar years immediately prior to the date of application, its:

(i) Locations; and

(ii) Total U.S. and total worldwide:

(A) Gross and net production of electricity; and

(B) Production of products of the type which would be produced by the OTEC facility or plantship which is the subject of the application.

§ 981.190 General information on the OTEC facility or plantship.

The following general information shall be submitted with the application in the order specified in this section:

(a) The proposed physical size and location (for a plantship, a description of the area in which the plantship is intended to be operated) of the OTEC facility or plantship, and the intended capacity of such facility or plantship to produce electricity, fresh water, or other products, including an estimate of the total annual gross and net production of electricity or other products;

(b) A description of the thermodynamic cycle and working fluid to be employed by the OTEC facility or plantship;

(c) A description of any production, processing, refining, or manufacturing process which will be used to make a product;

(d) A description of the methods which will be used to deliver electricity, fresh water, or other product to shore;

(e) A general description of the major components of the OTEC facility or plantship; and any pipeline or electrical transmission system or other product transfer system associated with such OTEC facility or plantship;

(f) If construction and deployment is expected to proceed in phases, a description of each phase, including the anticipated date of completion for each phase;

(g) The intended daily volumes of warm and cold water flow through the OTEC facility or plantship;

(h) A description of the procedures to be used in constructing, operating, and maintaining the OTEC facility or plantship, including procedures to be used to control biofouling and to minimize the volume of any Federally permitted pollutant discharge from the OTEC facility or plantship;

(i) A description of the procedures to be used in constructing, operating, and maintaining the OTEC facility or plantship to prevent any unpermitted pollutant discharge; and

(j) An emergency pollutant discharge contingency plan which describes the equipment, training, procedures, and maintenance required to respond to or conduct cleanup of any unpermitted pollutant discharge from the OTEC facility or plantship. (Standards for such a plan and for review of the adequacy of such a plan will be determined by the Coast Guard).

§ 981.200 Requested duration of license.

The applicant shall submit with the application a statement of the requested duration of the license he is seeking, along with the economic, technical, or other basis for the requested duration.

§ 981.210 Compliance with other Federal laws and regulations.

(a) If the proposal of the applicant is subject to regulation under the cited authority, the information specified in this section shall be submitted with the application.

(b) *Clean Water Act.* The information required to be submitted to the Environmental Protection Agency to obtain a *National Pollutant Discharge Elimination System* (NPDES) permit under section 402 of the *Clean Water Act* (Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 *et seq.*). The procedures and information required for such submittals are set out in 40 CFR Part 122, 40 CFR Part 124, and 40 CFR 125.120 *et seq.* In addition, NPDES permits for discharges into marine waters are issued in compliance with guidelines developed by EPA under section 403(c) of the Clean Water Act. For the Ocean Discharge Criteria see 40 CFR Part 125, Subpart M (45 FR 65952; October 3, 1980).

(c) *Clean Water Act.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Discharges of Dredged or Fill Material into Waters of the United States* under section 404 of the *Clean Water Act* (Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 *et seq.*). The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 323, and 33 CFR Part 325.

(d) *Marine Protection, Research, and Sanctuaries Act of 1972.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Ocean Dumping of Dredged Material* under section 103 of the *Marine Protection, Research, and Sanctuaries Act of 1972,* as amended (33 U.S.C. 1413). The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 324, and 33 CFR Part 325.

(e) *River and Harbor Act of 1899.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Structures or Work in or Affecting Navigable Waters of the United States* under section 10 of the *River and Harbor Act of 1899,* 33 U.S.C. 403. The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 322, and 33 CFR Part 325.

(f) *Endangered Species Act of 1973.* The information required to determine whether the activities of the OTEC facility or plantship are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats, as determined under the *Endangered Species Act of 1973* (16 U.S.C. 1531 *et seq.*). For the lists of endangered species, see 50 CFR Parts 17 and 222; for the lists of threatened species, see 50 CFR Parts 17 and 227; for the lists of designated critical habitats, see 50 CFR Parts 17 and 226.

(g) *Coastal Zone Management Act of 1972.* The certification or certifications required to be submitted to NOAA under section 307(c) of the *Coastal Zone Management Act of 1972* (CZMA) (16 U.S.C. 1456(c)). The procedures and information required for such submittals are set out in 15 CFR Part 930.

(h) *Outer Continental Shelf Lands Act Amendments of 1978.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Artifical Islands, Installations, and Other Devices, Installed on the Outer Continental Shelf, which May Obstruct Navigation,* under section 4(e) of the *Outer Continental Shelf Lands Act* (16 U.S.C. 203(e)). The procedures and information required for such submittals are set out in 33 CFR Part 322.

(i) *Clear Air Act.* The information required to be submitted to a State or to the Environmental Protection Agency to determine compliance with the *Clean Air Act* (42 U.S.C. 7401 *et seq.*). The procedures and information required for such submittals are set out in 40 CFR Parts 50-87.

(j) *Fish and Wildlife Coordination Act (FWCA).* Information to assist NOAA in complying with the consultation requirements of the FWCA (16 U.S.C. 661 *et seq.;* in particular, section 662), with a view to the conservation of fish and wildlife resources by planning and incorporating measures to prevent loss of and damage to such resources. NOAA strongly encourages each applicant to contact NOAA at the pre-application stage of the project, to facilitate early consultation with the National Marine Fisheries Service, the U.S. Fish and Wildlife Service and State agencies administering affected wildlife resources.

(k) *Additional Federal authorizations required.* All other applications for Federal authorizations required for ownership, construction, location, and operation of the proposed OTEC facility or plantship not listed elsewhere in this part.

[46 FR 39394, July 31, 1981; 47 FR 31861, July 23, 1982]

§ 981.220 OTEC site information.

(a) *General.* The following information on the proposed OTEC facility site or proposed OTEC plantship operating site(s), as appropriate, shall be submitted with an application.

(b) *Site plan.* Single-line drawings and descriptions showing the location and type of each major component and appurtenance of the proposed OTEC facility or plantship, including floating structures, fixed structures, electrical power transmission cables, aids to navigation, industrial process systems, offshore and onshore pipelines, electrical substations and switching stations. One of these drawings must be a large-scale nautical chart of the area in which the proposed OTEC facility or plantship would operate.

(c) *Existing human uses.* Single-line drawings of the marine area within five miles of the proposed site showing the nature and location of any cables, pipelines, offshore drilling or production platforms, aids to navigation, sewage outfalls, or other man-made structures and equipment. These drawings must also show the boundary lines and identification of each Outer Continental Shelf lease block, shipping lane, submarine transit lane, fishing ground, national defense restricted area, or other special area noted on navigation charts for the area covered by the drawings, or otherwise known to the applicant. The information required in § 981.260(a)(7) and (a)(8) of the part must also be included on these drawings.

(d) *Marine components.* A description of:

(1) The proposed size and location of:

(i) All fixed and floating structures associated with the OTEC facility or plantship;

(ii) In the case of a moored OTEC facility, watch circles;

(iii) Maneuvering areas;

(iv) Recommended ships' routing measures considered necessary or appropriate for the protection of the OTEC facility or plantship;

(v) Recommended anchorage areas, if any;

(vi) Recommended mooring area for support vessels;

(vii) Pipelines and cables within the marine site;

(2) The water depth throughout the proposed marine site.

(3) In the case of an OTEC facility, a reconnaissance hydrographic survey of the proposed marine site.

NOTE: A requirement to submit an engineering hydrographic survey of the final marine site for an OTEC facility will be imposed as a license condition.

(e) *Soil data.* For an OTEC facility, an analysis of the general character and condition of the ocean bottom and sub-bottom strata throughout the marine site and along the path of any cold or warm water intake or discharge piping, electrical transmission cable, or pipeline to the shore, including an opinion by a registered professional engineer with appropriate expertise and training, concerning:

(1) The suitability of the ocean bottom and sub-bottom strata to accommodate the anticipated design load of each marine component that will be fixed to or supported on the ocean floor as evidenced by foundation tests, geo-hazard reports, and geotechnical reports; and

(2) The stability of the seabed when exposed to the environmental forces resulting from severe storms, or to lesser forces that continue for an extended period, including any history of

accretion or erosion of the coast line in proximity to the marine site.

(f) *Onshore components.* A description of the size and location of major onshore components of the OTEC facility, including:

(1) Onshore electrical transmission cables or pipelines;

(2) Electrical substations;

(3) Switching stations;

(4) Electrical transmission lines;

(5) Storage facilities;

(6) Industrial plants; and

(7) Vessel on/off loading facilities.

§ 981.230 Operational information.

(a) Each applicant shall specify the wind, wave, and current conditions during which the licensee would initiate the following actions:

(1) Shutdown of electrical power or other product production operations.

(2) Prohibition on supply vessels or product transport vessels mooring to an OTEC facility or plantship.

(3) Shutdown of all operations and evacuation of the OTEC facility or plantship.

(b) Each application shall contain a description of the calculations and other information used to specify the conditions described in paragraph (a) of this section.

(c) Each application shall contain a description of the procedures to be followed in shutdown and evacuation of the facility or plantship under the conditions described in paragraph (a) of this section.

(d) Each application shall state the personnel capacity of the OTEC facility or plantship.

§ 981.240 Design information.

(a) The applicant shall submit the design information specified in this section with his application.

(b) *Major floating components data.* (1) A description and preliminary design drawing of each major floating component, including any electrical transmission riser cable, product transfer system, cold and warm water intake and discharge structures, or cold water pipe suspension system if they are floating systems in whole or in part, along with any floating anchoring or securing structure.

(2) The design criteria to which each major floating component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the results of any design and evaluation studies performed by or for the applicant on a major floating component.

(6) A description of safety, lifesaving, and firefighting equipment to be used on each major floating component.

(c) *Major fixed marine components.* (1) A description and preliminary design drawing of each major fixed marine component, including cold and warm water intake and discharge structures, if they are fixed marine components in whole or in part.

(2) The design criteria to which each major fixed marine component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the results of any design and evaluation studies performed by or for the applicant for any major fixed marine component and utilized in the development of the application.

(6) A description of safety, lifesaving, and firefighting equipment to be used on each major fixed marine component.

(d) *Major onshore components.* (1) A description and preliminary design drawing of each major onshore component.

(2) A description and the results of any design and evaluation studies performed by or for the applicant for any major onshore component and used in development of the application.

(3) A description of the safety and firefighting equipment to be used in each major onshore component.

(e) *Offshore electrical transmission cable or pipeline components.* (1) A description and preliminary design drawing of any submarine electrical transmission cable or pipeline, including size, capacity, length, depth and protective devices.

(2) The design criteria to which the submarine electrical transmission cable or pipeline is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the manner in which all submerged or buried communications cables, electrical transmission cables, and pipelines will be crossed by the offshore submarine electrical transmission cable or pipeline.

(f) *Miscellaneous components data.* (1) A description of the navigation safety equipment required under 33 CFR Part 164 for a plantship.

(2) A description of aids to navigation to be established on the OTEC facility in accordance with 33 CFR Part 64 and 33 CFR Part 66.

(3) A description of the proposed navigational lighting for the OTEC plantship in accordance with the International Regulations for Prevention of Collisions at Sea, 33 CFR Part 87.

(4) A description of the radio stations or other communications facilities and the proposed method of operation to serve the OTEC facility or plantship during construction and operation, including systems to communicate with transient shipping for safety at sea.

NOTE: Federal Communications Commission applications for the OTEC facility or plantship may be submitted directly to the Federal Communications Commission when sufficient technical information is available to meet the rules of that agency. The holding of appropriate Federal Communications Commission licenses will be made a condition on each OTEC facility or plantship license.

(5) A description of plans and methods of operating vessels supplying, or transporting products from, the OTEC facility or plantship.

(6) Type, size and number of vessels to be used in supplying or transporting products from the OTEC facility or plantship.

(7) A description and exact location of any shore-based support facilities to be provided for vessels described in paragraphs (f)(5) and (f)(6) of this section.

§ 981.250 Construction and deployment procedures.

A description of the locations, methods and procedures to be used in constructing and deploying each major marine component of the OTEC facility or plantship must be submitted. This description must include an explanation of the method for emplacing any submarine electrical transmission cable.

§ 981.260 Environmental information.

(a) The following environmental information and assessments shall be provided with the application:

(1) A description of the area or areas of the ocean and their boundaries, in which the OTEC activities of the applicant might impact so as to significantly degrade the operation of another OTEC facility or plantship, and in which the potential operation of another OTEC facility or plantship might impact so as to significantly degade the OTEC operation proposed by the applicant;

(2) An assessment of the quantities, composition and potential for bioaccumulation or persistence of any pollutants which may be discharged into the water or atmosphere from the facility or plantship;

(3) An assessment of the potential transport of such pollutants by biological, physical or chemical processes;

(4) An assessment of the composition and vulnerability of the biological communities which may be affected by entrainment, impingement, or by such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, the presence of species of marine mammals, or the presence of those species critical to the structure or function of the ecosystems, such as those important for the food chain;

(5) An assessment of the potential impacts on human health of such pollutants through direct and indirect pathways;

(6) An assessment of the importance of the receiving water area and atmosphere to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(7) A description of special sites which might be impacted by the proposed OTEC operations including, but not limited to, estuarine or marine sanctuaries and refuges, parks, national and historic monuments, archeological resources, national seashores, wilderness areas and coral reefs, and an assessment of the potential significance of such impacts. The location of these sites must be included on the drawings required by § 981.220(c) of this part;

(8) A description of existing or potential recreational and commercial fishing areas, including finfishing and shellfishing areas, which might be significantly impacted by the proposed OTEC operation. The locations of these areas must be included on the drawings required by § 981.220(c) of this part;

(9) A description of expected meteorological and climatic conditions in the area(s) described in paragraph (a)(1) of this section, including estimates of the frequency and severity of extreme meteorological events;

(10) For an OTEC facility, a description of the seismological conditions at the proposed site, including estimates of the frequency and severity of extreme seismological events;

(11) A description of the physical oceanographic conditions in the area(s) described in paragraph (a)(1) of this section, including surface and subsurface currents, density gradients and tides;

(12) A description of the environmental monitoring program proposed by the applicant to:

(i) Demonstrate compliance with applicable Federal, State, or other pertinent air and water quality standards;

(ii) Provide for early detection of potential releases of pollutants from the OTEC facility or plantship; and

(iii) Monitor the effects of cold and warm water intakes and of discharges from the OTEC facility or plantship on air, water, sediment, and biological quality. Note that numerical limits for conventional, non-conventional, and toxic pollutants for marine waters are identified in the Environmental Protection Agency publication *Quality Criteria for Water* (the "Red Book"), and in water quality criteria for toxic pollutants set out in 45 FR 79318-79370, November 28, 1980.

(b) A description and the results of any study or evaluation used by the applicant to develop the information and assessments required by this section must be submitted with the application.

Subpart C—License Application Review Procedures

§ 981.270 What is the license application review process?

This subpart describes the process which is used by NOAA to review an application for an OTEC license. The Act prescribes certain mandatory steps in the process and establishes deadlines for their completion. The mandatory steps in the license application review process are set out first in this subpart in §§ 981.280 through 981.370. NOAA has also developed a voluntary Consoldiated Application Review (CAR) process which will be used by NOAA and, on a voluntary basis, by other involved Federal, State, and local government entities, to coordinate reviews associated with all Federal, State, and local government authorizations required for ownership, construction, and operation of an OTEC facility or plantship. The steps in the CAR process are set out in this subpart after the mandatory review procedures, beginning at § 981.380.

§ 981.280 NOAA review for completeness.

(a) Within 21 days after the receipt of an application, the Administrator will determine whether the application appears to contain all of the information required by Subpart B of this part. In making this determination the Administrator will consult with other involved Federal agencies and departments.

(b) If the Administrator determines that such information appears to be contained in the application, the Administrator will take the actions under § 981.290 of this part.

(c) If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator will notify the applicant in accordance with § 981.90 of this part. The Administrator may decide to take no further action with respect to processing the application until such deficiencies have been remedied.

(d) The time limitations of this Subpart do not begin to run until the date on which the Administrator determines under paragraph (b) of this section that the application appears to be complete.

§ 981.290 Publication of notice of application; contents of notice; call for additional applications for OTEC facilities.

(a) Not later than 5 days after determining under § 981.280 of this part that an application appears to be complete, the Administrator will publish notice of receipt of the application, together with a summary of the plans specified in the application, in the FEDERAL REGISTER.

(b) In the case of an application for an OTEC facility the published notice also will include:

(1) A description of the designated application area encompassing the proposed OTEC facility, and within which:

(i) The OTEC activities proposed by the applicant might impact so as to significantly degrade the operation of another OTEC facility; and

(ii) The potential operation of another OTEC facility might impact so as to significantly degrade the OTEC operation proposed by the applicant;

(2) A call for submission of any other applications for licenses for the ownership, construction, and operation of an OTEC facility within the designated application area.

(c) Any person intending to file an application referred to in paragraph (b)(2) of this section shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to paragraph (a) of this section, and shall submit the completed application no later than 90 days after publication of such notice. No application for a license for the ownership, construction, and operation of an OTEC facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(d) Not later than 5 days after determining under § 981.280 of this part that an application submitted in accordance with paragraph (c) of this section appears to be complete, the Administrator will publish notice of receipt of the application, together with a summary of the plans specified in the application, in the FEDERAL REGISTER. The notice will also contain a description of the application area described in the original notice published by the Administrator for that area under paragraph (b) of this section.

(e) If additional applications for a designated application area are received pursuant to paragraph (c) of this section, the original applicant and all subsequent applicants for licenses in the designated application area shall submit the following information not later than 30 days after expiration of the 90-day period provided for in paragraph (c) of this section:

(1) Projections or estimates of the unit cost to the end user of produced electricity or product during the first, third, sixth, ninth, etc., year of operation throughout the requested duration of the OTEC facility license; and

(2) An estimate of the amount of fuel or other raw materials which would be saved or made available for other uses because of the operation of the OTEC facility, projected on an annual basis through the expected useful life of the OTEC facility.

The estimates provided under this paragraph should be supported by an analysis of the specific markets in which the OTEC facility would compete.

§ 981.300 Other Federal agencies and departments.

(a) At the time notice of any application is published pursuant to § 981.290 of this part, the Administrator will forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of OTEC facility or plantship ownership, construction, or operation for review, comment, and recommendation as to license conditions and for such other action as may be required by law. The Federal agencies involved shall include, but are not limited to, the Environmental Protection Agency and the Departments of Energy, Transportation, State, the Interior, Justice and Defense.

(b) Each Federal agency or department involved (other than the Department of Justice, which shall conduct its review in accordance with § 981.320 of this part) shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval, approval subject to conditions, or disapproval of the application not later than 45 days after public hearings are concluded pursuant to this part. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

(c) In addition to the requirements of paragraph (b) of this section, each Federal agency or department is strongly encouraged to conduct its review of the application and to make its initial or tentative recommendation of approval or denial to the Administrator before public hearings begin under § 981.340 of this part, so that the public hearings can address those tentative recommendations. The NOAA Administrator will also attempt to make his preliminary views on the application and possible license terms and conditions available before the first public hearing is held under § 981.340 of this part.

§ 981.310 EIS for each application.

(a) *General.* (1) The issuance of any license for ownership, construction, and operation of an OTEC facility or plantship will be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)).

(2) Whether other actions concerning a license, such as transfer or renewal of the license, require full EIS procedures will be determined on a case-by-case basis in accordance with NEPA.

(b) *NOAA as lead agency.* For all timely applications covering proposed OTEC facilities in a single application area, and for each application relating to a proposed OTEC plantship, the Administrator will, pursuant to section 102(2)(C) of NEPA and in cooperation with other involved Federal agencies and departments, prepare a single EIS which will fulfill the requirements of all Federal agencies in carrying out their responsibilities pursuant to the Act to prepare an EIS.

§ 981.320 Antitrust review.

(a) Promptly after determining under § 981.280 of this part that an application appears to be complete, the Administrator will transmit to the Attorney General a complete copy of such application.

(b) Within 90 days after receipt of the application under § 981.300(a) of this part, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator, in writing, any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws.

(c) The Administrator will not issue the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(d) If the Attorney General fails to file such views within the 90-day period, the Administrator will proceed as if such views had been received.

(e) If the Administrator decides to issue the license even though the Attorney General has recommended against it, or to issue the license without terms and/or conditions recommended by the Attorney General, the Administrator will inform the Attorney General in writing of the reasons for such a decision.

§ 981.330 Adjacent coastal States.

(a) *Automatic designation.* (1) The Administrator will designate as an "adjacent coastal State" any coastal State:

(i) Which would be directly connected by electric transmission cable or pipeline to an OTEC facility as proposed in an application;

(ii) In whose waters any part of such proposed OTEC facility would be located; or

(iii) In whose waters an OTEC plantship would be operated as proposed in an application.

(2) The Administrator will announce the designation of an adjacent coastal State under paragraph (a)(1) of this section in the notice of application published in the FEDERAL REGISTER under § 981.290 of this part.

(b) *Other designation.* (1) The Administrator will, upon request of a State, designate such State as an "adjacent coastal State" if he determines:

(i) That there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (a)(1) of this section, or

(ii) that the proposed OTEC activities of the applicant are likely to impact at possible locations for OTEC facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State, so as to significantly degrade OTEC operations at such possible locations.

(2) Any State requesting designation as an "adjacent coastal State" under paragraph (b)(1) of this section must make its request to the Administrator, in writing, not later than the 14th day after the date of publication of notice of application for a proposed OTEC facility or plantship in the FEDERAL REGISTER under § 981.290 of this part. The request must be signed by the Governor of the requesting State, and must specify in detail the reasons why the State believes the Administrator should make a determination under paragraph (b)(1) of this section.

(3) The Administrator will make any designation required by paragraph (b)(1) of this section not later than the 45th day after the date he receives such a request from a State.

(c) *Transmittal of application; "Federal Register" notice.* Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator will transmit a complete copy of the application to the Governor of such State, and publish notice of the designation in the FEDERAL REGISTER.

(d) *Consultation with adjacent coastal States with approved Coastal Zone Management programs on license conditions.* (1) The Administrator will not issue a license without consultation with the Governor of each adjacent coastal State which has an approved Coastal Zone Management (CZM) program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*).

(2)(i) If the Governor of a State referred to in paragraph (d)(1) of this section determines that an application is inadequate or inconsistent in some respect with the State's CZM program or other applicable State or local laws, the Governor may so notify the Administrator, including the following information:

(A) The part of the State's CZM program, or the other applicable State or local law, with respect to which the application is inadequate or inconsistent;

(B) The manner in which or reason why the application is inadequate or inconsistent; and

(C) How the application may be amended, or the license conditioned, so as to make activities conducted under the license consistent with the State's CZM program and other applicable State and local laws.

(ii) Any notice given to the Administrator by a Governor under paragraph (d)(2)(i) of this section must be in writing, and must contain the information described in paragraphs (d)(2)(i) (A) through (C) of this section.

(3) If the Governor of a State referred to in paragraph (d)(1) of this section has not transmitted his approval, or disapproval under paragraph (d)(2) of this section, to the Administrator by the 45th day after public hearings on the application are concluded under this part, his approval shall be conclusively presumed.

(4) Upon timely receipt of notice from a Governor under paragraph (d)(2) of this section, the Administrator will condition any license granted to make activities conducted under the license consistent with the State's CZM program and other applicable State and local laws. If a license cannot be so conditioned, the Administrator will not issue the license.

(e) *Consideration of views of other States.* Any adjacent coastal State which does not have an approved CZM program in good standing, and any other interested State, will have the opportunity to make its views known in writing to, and to have them given full consideration by, the Administrator regarding any application for a license for the ownership, location, construction, or operation of an OTEC facility or plantship.

(f) *Tentative recommendations.* In addition to the provisions of paragraphs (d) and (e) of this section, each adjacent coastal State is strongly encouraged to conduct its review of the application and to make its initial or tentative recommendations to the Administrator before public hearings begin under § 981.340 of this part, so that the public hearings can address those tentative recommendations.

§ 981.340 Informal public hearings on license application.

(a) *General.* (1) A license may be issued only after public notice, opportunity for comment, and public hearings in accordance with this part.

(2) Hearings held under this part will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Multiple applications for OTEC facilities.* If two or more license applications for OTEC facilities have been filed for the same designated application area, the Administrator will consolidate the hearings on the applications.

(c) *Location.* With respect to each license application, at least one public hearing will be held in the District of Columbia and in any adjacent coastal State in which an OTEC facility which is the subject of the application is proposed to be located or to which it would be directly connected by pipeline or electric transmission cable.

(d) *Notice of public hearing.* After all applications in a proceeding are filed, the Administrator will publish a notice of public hearing in the FEDERAL REGISTER and mail or deliver a copy of the notice to any person who requests it and to each applicant and to the Governor of each adjacent coastal State. Each notice will list the applicant(s), state the time and place for the hearing, and describe any factual issues in the proceeding. A notice may prescribe procedural matters to govern the hearing, may designate the presiding officer assigned by the Administrator for the hearing, and may contain such other information as the Administrator determines may facilitate the conduct of the hearing.

(e) *Participation by interested persons.* Interested persons may attend any public hearing, present relevant material at the hearing, and submit written material and oral statements during the hearing at a time and in a manner determined by the presiding officer.

(f) *Report of public hearing.* Within 21 days after a public hearing is completed, the presiding officer will prepare a report of the hearing. The report at a minimum will contain a summary of the materials presented and factual issues raised at the hearing and will have attached to it a transcript of the hearing and all relevant written materials submitted to the presiding officer.

§ 981.350 Formal hearings on material factual issues.

(a) If, on the basis of the hearing report required by § 981.340 of this part, the Administrator determines that there exists one or more specific and material factual issues which must be resolved by a formal evidentiary hearing, the Administrator will issue a notice of formal hearing under § 981.560(d) of this part.

(b) If the Administrator determines under paragraph (a) of this section that a formal hearing is necessary, at least one adjudicatory hearing will be held in the District of Columbia in accordance with 5 U.S.C. 554 and the procedures set forth in Subpart E of this part. The record developed in any such adjudicatory hearing will be part of the basis for the Administrator's decision to approve or deny a license.

§ 981.360 Timely conclusion of public hearings.

(a) All public hearings on all applications with respect to OTEC facilities for any designated application area will be concluded not later than 240 days after notice of the initial application has been published under § 981.290 of this part.

(b) All public hearings on applications with respect to OTEC plantships will be concluded not later than 240 days after notice of the application has been published pursuant to § 981.290 of this part.

(c) Upon conclusion of all public hearings with respect to an OTEC license application under this part, the Administrator will publish a notice in the FEDERAL REGISTER stating that all such public hearings have been concluded and specifying the date by which recommendations or notice must be submitted under §§ 981.300(b) and 981.330(d)(3) of this part.

§ 981.370 Timely issuance of draft and final EIS's on the application.

(a) *Draft EIS.* Each draft EIS relating to proposed OTEC facilities or plantships will be prepared and issued within 180 days after notice of the initial application has been published pursuant to § 981.290 of this part.

(b) *Final EIS.* Each final EIS shall be issued not later than 90 days following the date on which public hearings are concluded pursuant to § 981.360 of this part.

(c) *Extension of time periods.* The Administrator may extend the deadlines specified in paragraphs (a) and (b) of this section for issuance of a specific draft or final EIS to a later specified date if the Administrator notifies the applicant in writing and describes the good cause for such extension.

§ 981.380 Steps in the voluntary Consolidated Application Review (CAR) process.

(a) The voluntary CAR process, which supplements the preceding mandatory steps in this subpart, includes the following procedures:

(1) Early designation of a representative from each participating Federal, State, and local government entity, as well as each OTEC license applicant, to serve as members of the Consolidated Application Review (CAR) team;

(2) Development and signing of a Joint Agreement among the participating Federal, State, and local government entities and each applicant. The Joint Agreement identifies the members of the CAR team, details the regulatory and review responsibilities of each participating government agency having jurisdiction over any aspect of the construction or operation of OTEC facilities or plantships, and outlines the responsibilities of each applicant in the CAR process;

(3) Conducting an inter-agency meeting with all members of the CAR team which includes a briefing by each applicant on the details of each proposed OTEC facility or plantship, and a briefing by the government members on the procedures to be used in processing all necessary permits, authorizations, and approvals; and

(4) Implementation of the CAR schedule, including completion of required regulatory reviews, conduct of necessary public hearings, preparation of an Environmental Impact Statement, and other CAR team activities necessary to ensure close coordination of the OTEC license review process.

§ 981.390 Voluntary nature of the CAR process.

(a) *Applicant.* Participation by each applicant in the CAR process is voluntary. If an applicant desires to have the application processed by the CAR process the application shall so indicate and shall contain a designation of a CAR team representative.

(b) *Other Federal, State, and local government entities.* Participation by other Federal, State, and local government entities in the CAR process is voluntary. If an applicant indicates a desire to use the CAR process, NOAA will contact other Federal, State, and local government entities with expertise concerning, or jurisdiction over, any aspect of the construction or operation of the OTEC facility or plantship proposed by the applicant and invite them to designate a representative to serve on the CAR team for that application.

(c) *Other application review agreements.* Agreements other than the Joint Agreement may, at the option of the affected parties, be negotiated between any applicant and individual regulatory agencies, or between regulatory agencies, regarding any aspect of the regulatory reviews necessary pursuant to any government permit, license, or authorization required for construction or operation of the OTEC facility or plantship which is the subject of the application. Such agreements may be negotiated before or after an application for an OTEC license is submitted to NOAA. Such agreements will not be affected by an applicant's later decision to use the CAR process.

§ 981.400 Effect of Joint Agreement on authorities.

Nothing in the Joint Agreement developed by the CAR team shall abrogate the statutory, regulatory, or administrative responsibilities and rights of any party, agency, or jurisdiction. The CAR agreement is voluntary, and all parties will, in good faith, work in a cooperative and coordinated fashion to carry out the responsibilities stated therein.

§ 981.410 Request for designation of Federal CAR team members.

Not later than the time the Administrator forwards copies of the application to other Federal agencies and departments pursuant to § 981.300 of this part, the Administrator will request that each such agency and department designate a representative to serve on the CAR team for the application, if the applicant has requested that the CAR process be used for application review. Such Federal agencies and departments will be requested to make CAR team member designations within 14 days of receipt of the Administrator's request.

§ 981.420 Request for designation of State and local CAR team members.

(a) *State members.* Not later than the time the Administrator forwards copies of the application to designated adjacent coastal States pursuant to § 981.330 of this part, the Administrator will request that each such adjacent coastal State designate a representative to serve on the CAR team for the application, if the applicant has requested that the CAR process be used for review of the application. Such designated adjacent coastal States will be requested to make CAR team member designations within 14 days of receipt of the Administrator's request.

(b) *Local government members.* The request from the Administrator pursuant to paragraph (a) of this section will include a request that the designated adjacent coastal State coordinate with affected local government entities within such State to assist such entities in designating CAR team members to serve on the CAR team for the application. Such designated adjacent coastal States will be requested to forward local government CAR team member designations to the Administrator within 14 days of receipt of the Administrator's request.

§ 981.430 Development of Joint Agreement by CAR team.

(a) *Schedule.* Within 45 days after all members of the CAR team for the application are designated pursuant to this part, the CAR team will develop and sign a Joint Agreement among the participants.

(b) *Content.* The Joint Agreement will include, as a minimum:

(1) An identification of all members of the CAR team;

(2) A statement of the regulatory and review responsibilities of each government entity represented on the CAR team;

(3) A statement of the responsibilities of the representative of each applicant during the CAR process to be conducted on the application;

(4) A schedule of meetings, hearings, and decisions which must be completed during the CAR process; and

(5) A brief description of the OTEC facility or plantship proposal which is the subject of the application.

(c) *Availability.* After the Joint Agreement is completed and signed by CAR team participants, it will be listed on the docket and made a part of the record of the application proceeding in accordance with § 981.140 of this part. The Joint Agreement will then be available for public inspection and copying in accordance with § 981.150 of this part.

§ 981.440 Inter-agency CAR team meeting.

(a) *Schedule.* After completion of the Joint Agreement and prior to any public hearing on the application required by the Act, the CAR team will hold an initial public meeting. If practicable, the meeting will be held in an adjacent coastal State designated as such under § 981.330 of this part.

(b) *Content.* The inter-agency CAR team meeting will consist of a briefing by each applicant on the details of the proposed OTEC facility or plantship and briefings by each government member of the CAR team on the procedures to be used in processing all necessary permits, authorizations, and approvals.

(c) *Public participation.* Interested persons may attend the inter-agency CAR team meeting, present relevant material, and submit written and oral statements at a time determined by the presiding officer.

§ 981.450 Implementation of the CAR schedule.

(a) *Cooperation.* All members of the CAR team will, in good faith, work in a cooperative and coordinated fashion to address the responsibilities stated in the Joint Agreement and to assure that the schedule in the Joint Agreement is adhered to.

(b) *Delays.* All parties to the Joint Agreement will make good faith efforts to adhere to the schedule agreed to therein. However, if unavoidable delays occur in submittal and review of information during the CAR process, the CAR team members will revise the Joint Agreement schedule accordingly. A copy of any such revised schedule will be listed in the docket and made part of the record of the application proceeding.

Subpart D—Criteria for Approval or Denial of Application and for Establishment of License Terms and Conditions; Renewal, Transfer, Modification, Revision, Suspension, Revocation, Termination, Relinquishment, and Surrender

§ 981.460 Timely approval or denial of application for a license and issuance of a license.

(a) The Administrator will approve or deny any timely filed application for a license for ownership, construction, and operation of an OTEC facility for a designated application area not later than 90 days after public hearings on the applications for that application area are concluded pursuant to § 981.360 of this part.

(b) The Administrator will approve or deny an application for a license for ownership, construction, and operation of an OTEC plantship not later than 90 days after the public hearings on the application are concluded pursuant to § 981.360 of this part.

(c) If an application is approved, the Administrator will issue a license to the applicant not later than 30 days after approval of the application, provided the application fee has been paid in accordance with § 981.130 of this part.

§ 981.470 Criteria for approval or denial.

(a) The Administrator may issue a license in accordance with the provisions of this part unless:

(1) The Administrator determines that the applicant cannot or will not comply with applicable laws, regulations, and license terms and conditions;

(2) The Administrator determines that the construction and operation of the OTEC facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) The Administrator determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the OTEC facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) The Administrator has been informed, within 45 days after the conclusion of public hearings on that application, or on multiple applications for OTEC facilities for the designated application area, by the Administrator of the Environmental Protection Agency that the OTEC facility or plantship will not conform with all applicable provisions of any law for which EPA has regulatory authority;

(5) The Administrator has received the opinion of the Attorney General, pursuant to § 981.320 of this part, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in § 981.320 of this part has not expired;

(6) The Administrator has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof that the application for a license is inadequate;

(7) The proposed OTEC facility or plantship will not be documented under the laws of the United States;

(8) The applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the OTEC facility or plantship unless such vessel is documented under the laws of the United States;

(9) When the license is for an OTEC facility, the Administrator determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) The Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) notifies the Administrator under § 981.330(d) of this part that the application is inadequate or inconsistent with respect to programs within his jurisdiction and the license cannot be conditioned as described in § 981.330(d)(4) of this part;

(11) When the license is for an OTEC facility, the Administrator determines that the operations of the facility are expected to impact so as to significantly degrade the operations of any other OTEC facility already licensed or operating, without the consent of its owner;

(12) When the license is for an OTEC facility, the Administrator determines that the operations of the facility are expected to impact so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impact after consultation with such nation;

(13) When the license is for an OTEC plantship, the Administrator determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its operations from

impacting so as to significantly degrade the operation of any other OTEC facility or plantship without the consent of its owner, and from impacting so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impact after consultation with such nation;

(14) If a regulation has been adopted which places an upper limit on the number or total capacity of OTEC facilities or plantships to be licensed under this part for simultaneous operation, either overall or within specific geographic areas, the Administrator determines that issuance of the license will cause such upper limit to be exceeded;

(15) The Administrator determines that the person to whom the license would be issued is not a United States citizen; or

(16) The Administrator cannot insure that activities authorized by the license are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species, unless an appropriate exemption has been granted under section 7(h) of the Endangered Species Act (16 U.S.C. 1536(h)).

§ 981.480 Multiple applications.

(a) In the event more than one application for a license for ownership, construction, and operation of an OTEC facility is submitted for the same designed application area, the Administrator will make decisions on license applications in the order in which they were submitted, unless the Administrator determines that one or a specific combination of the proposed facilities clearly best serves the national interest.

(b) In determining whether any one or a specific combination of the proposed OTEC facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, will consider the following factors:

(1) The goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(2) The amount of net energy impact of each of the proposed OTEC facilities;

(3) The degree to which the proposed OTEC facilities will affect the environment;

(4) Any significant differences between anticipated dates of commencement of operation of the proposed OTEC facilities; and

(5) Any differences in costs of construction and operation of the proposed OTEC facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

§ 981.490 Condition precedent to issuance of license: Compliance with conditions and prior approval of changes.

(a) *General.* No license will be issued under this part unless the prospective licensee first agrees in writing that:

(1) There will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator;

(2) There will be no change in the:

(i) Ownership of the licensee; or

(ii) Citizenship of the president or other executive officer or the chairman of the board of directors, or holder of similar office, of any member of the board of directors, of the licensee; without prior reporting, in writing, to the Administrator; and

(3) The prospective licensee will comply with license terms and conditions the Administrator may prescribe in accordance with the provisions of this part.

(b) *Emergencies.* In case of an emergency posing an imminent and substantial threat of harm to the OTEC facility or plantship, to human life, or to the environment, the licensee is not required to obtain written approval from the Administrator before making a substantial change referred to in paragraph (a)(1) of this section. If circumstances allow, the licensee should seek oral approval from the Administrator before making a substantial change. The licensee must immediately notify the Administrator, orally or in writing, of each substantial change made.

§ 981.500 Contents of license.

(a) Each license issued will contain, among other information, the following:

(1) The name and number or other identification of the OTEC facility or plantship;

(2) The name of the person to whom the license is issued;

(3) If different from the person to whom the license is issued, the name(s) of the owner and operator of the OTEC facility or plantship; and

(4) Terms and conditions on the ownership, construction, location, and operation of the OTEC facility or plantship to which the license is subject pursuant to § 981.520 of this part.

§ 981.510 Duration of licenses and renewals.

(a) *Original license.* Each license issued under this part will be for such period of years as the Administrator may specify, but not exceeding 25 years.

(b) *Renewals.* Each renewal issued under this part will be for such period of years as the Administrator may specify, but not exceeding 10 years.

§ 981.520 Terms and conditions of a license.

(a) *General.* Each license issued for an OTEC facility or plantship will contain such terms and conditions on the ownership, construction, location, and operation of the facility or plantship as specified in this section and such other terms and conditions as the Administrator may prescribe as necessary to carry out the provisions of the Act and this part, or which are required by any Federal department or agency pursuant to the terms of the Act and this part.

(b) *Disposal or removal of components of OTEC facility or plantship.* The Administrator will establish as license conditions such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the OTEC facility or plantship as directed by the Administrator. The requirement to remove or dispose of all components may be waived by the Administrator if:

(1) In the case of components another applicant or licensee requests to use, the Administrator has not yet reached a decision on the request for continued use of the components; or

(2) In the case of components lying on or in the seabed, the Administrator finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

(c) *Consistency with programs of an adjacent coastal State.* If the Governor of any adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*), gives timely notice to the Administrator under § 981.330(d) of this part that an application is inadequate or inconsistent with the State's coastal zone management program or other applicable State or local laws, the Administrator will condition any license granted to make activities conducted under the license consistent with the State's coastal zone management program and other applicable State and local laws.

(d) *Prevention of interference with other uses of the high seas.* Each license will include such conditions as the Administrator may determine to be necessary and appropriate to ensure that construction and operation of the OTEC facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention on the High Seas and the general principles of international law.

(e) *Discharge impacts.* (1) Each license will include such conditions as the Administrator deems necessary to ensure that discharges from the OTEC facility or plantship will not:

(i) Significantly degrade the operation of another OTEC facility or plantship, or

(ii) Create a significant adverse effect on the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

(f) *Additional license condition for OTEC plantships.* Each license issued for an OTEC plantship will contain a condition requiring that the licensee comply with such regulations concerning movement and navigation of OTEC plantships as the Coast Guard may issue under section 109(c) of the Act.

(g) *Monitoring of license's activities.* Each license will contain terms or conditions requiring the licensee:

(1) To allow the Administrator to place appropriate Federal officers or employees aboard the OTEC facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any terms, conditions, or regulations applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

(2) To cooperate with such officers and employees in the performance of monitoring functions; and

(3) To monitor the environmental effects of the operation of the OTEC facility or plantship in accordance with those terms and conditions.

(h) *Diligence.* Each license will contain a condition that the licensee diligently pursue the construction and operation of the OTEC facility or plantship to which the license applies, as determined by the Administrator's estimate of a reasonable schedule for construction and operation, based on information submitted with the application. The diligence condition established by the Administrator will allow for reasonable delay resulting from unforeseen circumstances. If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the OTEC facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator will cause proceedings to be instituted under section 111 of the Act to terminate the license.

(i) *Reports and records.* Each license will contain a condition that the licensee keep such records and report periodically to the Administrator such information as the Administrator finds to be necessary and appropriate:

(1) To assess compliance with diligence conditions established under paragraph (h) of this section;

(2) To assess environmental impacts of the OTEC operations of the licensee and to develop mitigation methods; and

(3) To comply with the requirements of Federal law and regulation.

(j) *U.S.-flag transportation vessels.* Each license will contain a condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the OTEC facility or plantship unless such transportation vessel is documented under the laws of the United States.

(k) *Foreign-flag vessels.* Each license will contain a condition that, except in a situation involving force majeure, the licensee will not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize the facility or plantship which is the subject of the license unless:

(1) The foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel while the vessel is located within any safety zone around the facility or plantship established by the Secretary of the department in which the Coast Guard is operating, pursuant to section 108(d) of the Act; and

(2) The vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such safety zone.

(l) *Compliance with other Federal law.* Each license may contain conditions imposed by the Administrator as necessary to assure the compliance of activities conducted under the license with other Federal laws and regulations. Such conditions will be based upon the review of and comment upon the application as conducted by Federal agencies and departments under Subpart C of this part.

§ 981.525 Review, modification and revision of license terms and conditions.

(a) *NOAA review.* Periodically, at intervals not to exceed 3 years, the Administrator will conduct a review of each licensed OTEC facility or plantship operation in conjunction with the licensee to determine the need, if any, for modification of license terms and conditions.

(b) *Modification.* As the result of a review conducted under paragraph (a) of this section or at any other time, the Administrator, after consultation with interested Federal and State departments and agencies and the licensee, and after an opportunity for public comment, may modify any term or condition in a license consistent with the purposes of the Act and this part.

(c) *Revision.* (1) At any time during the term of a license, the licensee may submit to the Administrator a request for a revision of a license.

(2) The Administrator will approve such requests for a revision upon a finding in writing that the license with such revision would continue to meet the requirements of the Act and this part.

(3) A change which would require a request to and approval by the Administrator as a revision is any change:

(i) Which would have significance for the findings contained in § 981.470(a) which would permit the Administrator to refuse to issue a license; or

(ii) Which would result in ownership, construction, location or operation of an OTEC facility or plantship contrary to existing terms and conditions in the license.

(d) *Public notice and opportunity to comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposed modification, and of each request for revision, of a license term or condition. Interested persons will be allowed at least 30 days after publication of the notice to submit written comments to the Administrator. On a case-by-case basis, the Administrator will determine whether to provide additional public participation procedures, such as conducting an informal public hearing in a potentially affected adjacent coastal State.

(e) *Notice to the licensee and to Federal agencies and adjacent coastal States.* (1) The Administrator will issue written notice of each proposed modification, and of each proposed revision, of a license term or condition, to:

(i) The licensee;

(ii) Each Federal department or agency with jurisdiction over any aspect of the ownership, construction, location, or operation of the OTEC facility or plantship, which aspect may be affected by the proposed modification or revision; and

(iii) The Governor of each adjacent coastal State designated with respect to the OTEC facility or plantship involved.

(2) Each recipient of the notice may submit to the Administrator such written comments or recommendations regarding the proposed modification or revision as the recipient deems appropriate. Each Federal or State department or agency also may take such actions as may be required by law. If a Federal or State department or agency recommends that the proposed modification or revision not be approved, it shall set forth in detail:

(i) The manner in which the proposed modification or revision does not comply with any law or regulation within its area of responsibility; and

(ii) The manner in which the proposed modification or revision may be amended so as to bring it into compliance with the law or regulation involved.

(3) Each recipient of the notice issued under paragraph (e)(1) of this section will be allowed 30 days from the date of issuance of that notice, or until the last day of the public comment period allowed under paragraph (d) of this section, whichever time period extends longer, in which to submit written comments and recommendations to the Administrator.

(f) *Initial decision.* (1) After the close of the opportunity for comment provided in paragraphs (d) and (e) of this section, the Administrator will initially approve or disapprove the proposed modification or revision.

(2) The Administrator will publish notice of the initial decision in the Federal Register and provide written notice of the initial decision to the licensee and to each Federal department and agency, and to the Governor of each adjacent coastal State, to which notice was issued under paragraph (e) of this section.

(g) *Acceptance or objection by licensee.* (1) The licensee will be deemed conclusively to have accepted the initial decision of the Administrator, if the licensee does not notify the Administrator, within 30 days after issuance of the written notice to the licensee under paragraph (f)(2) of this section, that the licensee objects to the initial decision. Any objection filed by a licensee must state, in writing:

(i) Why the initial decision is legally inconsistent with the Act or this part; and

(ii) Information concerning any underlying factual issue deemed by the licensee to be necessary to the Administrator's decision upon the objection.

(2) The Administrator will promptly take action on any licensee's objection which meets the requirements of paragraph (g)(1) of this section. If the Administrator determines that there exist one or more specific and material issues of fact pertaining to the initial decision on the proposed modification or revision, which must be resolved by a formal evidentiary hearing, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart E of this part, except that for the purposes of a formal hearing under this section, references in Subpart E to:

(i) The "applicant" will be deemed to mean the "licensee";

(ii) The "application" will be deemed to mean "the modification or revision of the license"; and

(iii) "Issuance, transfer or renewal of a license" will be deemed to mean "modification or revision of a license."

(h) *Final action by the Administrator.* (1) After the close of the 30-day period described in paragraph (g)(1) of this section, or after taking action on a licensee's objection under paragraph (g)(2) of this section, the Administrator will take final action on the license modification or revision.

(2) The Administrator will implement a license modification or revision by issuing an appropriate document amending the license.

§ 981.530 Renewal of a license.

Each licensee shall have a preferential right to renew a license subject to the requirements of this part, upon such terms and conditions and for such period of years, not to exceed an additional 10 years for each renewal, as the Administrator determines to be reasonable and appropriate.

§ 981.540 Transfer of license.

Upon application, a license issued under this part may be transferred if the Administrator determines that such transfer is in the public interest and that the prospective transferee meets the requirements, and the prerequisites to issuance, of this part. When a licensee intends to apply for transfer of the license, the licensee and the prospective transferee shall consult with the Administrator regarding applicability of the requirements of this part to the proposed transfer.

§ 981.550 Suspension, revocation, termination, relinquishment or surrender of a license.

(a) *Suspension or revocation.* Whenever a licensee fails to comply with any applicable provision of the Act or any applicable rule, restriction, or license term or condition issued or imposed by the Administrator under this part, the Administrator may request that the Attorney General file an action in an appropriate United States district court:

(1) To suspend the license; or

(2) To revoke such license, if such failure is knowing and continues for a period of 30 days after the Administrator sends notification of such failure by registered letter to the licensee at his record post office address.

(b) *Automatic operation of license terms.* The Administrator may provide in the terms of a license for automatic suspension or termination of the license upon the occurrence of a fixed or agreed-upon condition, event, or time. In such cases, judicial proceedings under paragraph (a) of this section are not required to effect a suspension or termination.

(c) *Emergency orders.* The Administrator may order the licensee to cease or alter construction or operation activities pending the completion of a judicial proceeding pursuant to paragraph (a) of this section if the Administrator determines that immediate suspension of such activities is necessary to protect public health and safety or to eliminate any imminent and substantial danger to the environment as recognized in any treaty or convention to which the United States is a party.

(d) *Relinquishment or surrender.* (1) Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an OTEC facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license. However, such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by applicable law, or of any obligation or liability for actions taken by him prior to such surrender or reliquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this part.

(2) If part of all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator under paragraph (d)(1) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an OTEC facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

Subpart E—Formal Hearing Procedures

§ 981.560 Formal hearing procedures.

(a)(1) *General.* All formal hearings described in §§ 981.350 and 981.525 of this part are governed by 5 U.S.C. 554 through 557 and the procedures contained in this section.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Decision to hold a hearing.* (1) Whenever, after holding an informal hearing under § 981.340 of this part, the Administrator determines that there are one or more specific and material issues of fact pertaining to the application which must be resolved by a formal hearing, he will provide for a formal hearing.

(2) Whenever, under § 981.525 of this part, the Administrator determines that there are one or more specific and material issues of fact pertaining to the proposed modification or revision to the terms or conditions of the license which must be resolved by a formal hearing, he will provide for a formal hearing.

(3) The record developed in any formal hearing under this paragraph will be part of the basis for the Administrator's decision to approve or deny issuance, modification, or revision of a license, as applicable.

(c) *Assignment of Administrative Law Judge.* Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the NOAA Office of Administrative Law Judges for assignment to an Administrative Law Judge (judge) to serve as presiding officer for the hearing.

(d) *Notice.* (1) The Administrator will publish public notice of the formal hearing in the FEDERAL REGISTER at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail or by personal delivery to:

(i) Each applicant;

(ii) The Governor of each adjacent coastal State;

(iii) Each person who submitted written comments upon the application, or testified at any prior informal hearing on the application; and

(iv) Each person who requests a copy of the notice.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing;

(ii) The issues in dispute which are to be resolved in the formal hearing;

(iii) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(iv) Reference to any prior informal hearing from which the issues to be determined arose.

(e) *Powers and duties of the administrative law judge.* Judges have all the powers and duties necessary to preside over the parties and proceedings and to conduct fair and impartial hearings, as specified by 5 U.S.C. 554 through 557 and this section, including the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation;

(3) Hold conferences in accordance with paragraph (i) of this section for the simplification or, if appropriate, settlement of the issues by consent of the parties or to otherwise expedite the proceedings;

(4) Administer oaths and affirmations;

(5) Rule upon requests for, and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, and other evidence upon proper application under paragraph (p) of this section;

(6) Rule on discovery requests, establish discovery schedules, and take or cause to be taken depositions or interrogatories;

(7) Rule on requests for protective orders to protect persons in the discovery process from undue burden or expense, or for other good cause;

(8) Require, at or prior to any hearing, the submission and exchange of evidence;

(9) Rule upon offers of proof and evidence and receive, exclude, and limit evidence as set forth in paragraph (j)(3) of this section;

(10) Introduce documentary or other evidence into the record;

(11) Examine and cross-examine witnesses;

(12) Consider and rule upon motions, procedural requests, and similar matters;

(13) Take such measures as may be necessary (such as sealing portions of the hearing record) to protect information consisting of trade secrets or commercial or financial information which is privileged or confidential;

(14) Schedule the time and place of the hearing (in accordance with the Act), or the hearing conference, continue the hearing from day to day, adjourn the hearing to a later date, or a different place, and reopen the hearing at any time before issuance of the recommended or initial decision, having due regard for the convenience and necessity of the parties;

(15) Establish rules, consistent with applicable law, for media coverage of the proceedings and for the closure of the hearing in the interest of justice;

(16) Strike testimony of a witness refusing to answer a question ruled to be proper;

(17) Make and file decisions in conformity with this subpart; and

(18) Take any action authorized by the rules in this section or in conformance with 5 U.S.C. 554 through 557.

(f) *Hearings: Participation.* (1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) The applicant; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) of this section, to be eligible to participate as a full party.

(2)(i) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. Such person will be allowed to participate as a party if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge will give special consideration to each request from a designated adjacent coastal State to participate as a party.

(ii) Any request to participate as a party must be submitted to the judge within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing under paragraph (d) of this section, whichever occurs later. The judge may entertain a request submitted after the expiration of the 10 days, but such a late request may be granted only upon an express finding on the record that:

(A) Special circumstances justify granting the request;

(B) The interests of justice and a fair determination of the issues would be served by granting the request;

(C) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(D) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request to the judge within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the 10 day rule for good cause, such as if the interested person, making this request after the expiration of the 10 days, shows that he lacked actual knowledge of the formal hearing during the 10 days, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit any interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning an issue being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) of this section.

(iii) The judge may allow any interested person to submit oral testimony, oral arugments, briefs, or to cross-examine witnesses or participate in other ways if the judge determines that the interests of justice and a fair determination of the issues would be better served by allowing such participation by the interested person.

(g) *Certification of issues.* Whenever a formal hearing is conducted pursuant to this section, the Administrator will certify the issues for decision to the judge and the formal hearing will be limited to those issues.

(h) *Obligation to submit evidence and raise issues before a formal hearing is held.* No party or interested person may submit evidence which was not submitted previously for the administrative record as part of the comment on the application for issuance, transfer or renewal of a license, unless the judge finds that good cause exists for the failure to submit it. Good cause includes the case where the person seeking to raise the new issues or introduce new information shows that the person could not reasonably have ascertained the issues or made the information available at a prior stage in the administrative process; or that the person could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(i) *Conferences.* (1) At any time the judge considers appropriate, he may, upon his own motion or the motion of any party or interested person, direct the parties and interested persons, or their attorneys to meet (in person, by telephone conference call, or otherwise) in a conference to consider:

(i) Simplification of the issues;

(ii) Settlements in appropriate cases;

(iii) Stipulations and admissions of fact, and contents and authenticity of documents;

(iv) Exchange of evidence, witness lists, and summaries of expected testimony;

(v) Limitation of the number of witnesses; and

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record will show how the matters were disposed of by order and by agreement in such conferences.

(j) *Hearings: Appearance and presentation of evidence*—(1) *Representative.* A party or interested person may appear at a hearing under this part in person, by attorney, or by other representative.

(2) *Failure to appear.* (i) Absent a showing of good cause, failure of a party to appear at a hearing:

(A) Constitutes waiver of the right to a hearing under this section;

(B) Constitutes consent of the party to the making of a decision on the record of the hearing; but

(C) Will not be deemed to be a waiver of the right to be served with a copy of the judge's decision.

(ii) If a party fails to appear for a hearing, the judge will cause to be placed in the record all of the facts concerning the issuance and service of the notice of the time and place of the hearing.

(3) *Evidence.* (i) The order of presentation of evidence will be at the judge's discretion.

(ii) The testimony of witnesses will be upon oath or affirmation administered by the judge and will be subject to such cross-examination as may be required for a full and true disclosure of the facts. The formal rules of evidence do not apply, but the judge will exclude evidence which is immaterial, irrelevant, non-probative, or unduly repetitious. Hearsay evidence is not inadmissable as such.

(iii) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party must state briefly the grounds for such objections. Rulings on each objection will appear in the record.

(iv) Formal exception to an adverse ruling is not required.

(v) At any time during the proceedings, the judge may require a party or a witness to state his position on any issue, and the theory in support of such position.

(vi) Upon the failure of a party or interested person to effect the appearance of a witness or the production of a document or other evidence ruled relevant and necessary to the proceeding, the judge may take appropriate action, as authorized by law.

(vii) The parties may, by stipulation, agree upon any facts involved in the proceedings and include them in the record with the consent of the judge. Written stipulations shall be signed in accordance with paragraph (r)(2) of this section, and shall be served upon all parties of record within the time period specified by the judge.

(4) *Authority of judge to expedite adjudication.* To prevent unnecessary delays or an unnecessarily large record, the judge may:

(i) Limit the number of witnesses whose testimony may be cumulative;

(ii) Strike argumentative, repetitious, cumulative, immaterial, non-probative, or irrelevant evidence;

(iii) Take necessary and proper measurses to prevent argumentative, repetitious, or cumulative cross-examination; and

(iv) Impose such time limitations on arguments as the judge determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

(5) *Argument.* At the close of any formal hearing any party shall be given the opportunity to submit written arguments on issues before the judge.

(6) *Official notice.* Official notice may be taken of any matter not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Commerce, by reason of its functions, is deemed to be expert, or of a non-privileged document required by law to be filed with, prepared or published by a government body, or of any reasonably available public document. The parties will be given adequate notice, at the hearing or otherwise before the judge's decision, of the matters so noticed, and upon timely request by a party will be given reasonable opportunity to show the contrary.

(7) *Record.* (i) The judge or the Administrator will arrange for a verbatim tape or other record of any oral hearing proceedings. An official transcript of the proceedings will be prepared and copies may be obtained upon written request filed with the reporter and upon payment of the fees at the rate provided in the agreement with the reporter.

(ii) The official transcript, exhibits, briefs, reply briefs, proposed findings of fact, requests and other documents and papers filed will constitute the exclusive record for decision on the issues concerning which the hearing was held.

(iii) The record developed in any hearing held pursuant to § 981.350 of this part will be part of the basis for the Administrator's decision to approve or deny the license.

(k) *Interlocutory appeals.* (1) At the request of a party or on the judge's own motion, the judge may certify to the Administrator for review a ruling which does not finally dispose of the proceeding if the judge determines that such a ruling involves a controlling question of law and that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(2) Upon certification by the judge of an interlocutory ruling for review, the Administrator will expeditiously decide the matter, taking into account any briefs in this respect filed by the parties within 10 days after certification. The Administrator's order on an interlocutory appeal will not be considered the final decision of the Administrator except by operation of other provisions in this section.

(3) No interlocutory appeal will lie as to any ruling not certified to the Administrator by the judge. Objections to rulings not certified to the Administrator by the judge will be a part of the record and will be subject to review at the same time and in the same manner as the Administrator's review of the recommended or initial decision of the judge.

(l) *Decision*—(1) *Proposed findings of fact.* The judge will allow each party to file with the judge proposed findings of fact together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed on or before the date specified by the judge. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within 10 days after receipt of the proposed findings to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* As soon as practicable, but normally not later than 30 days after the close of the record in the proceedings, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The formal hearing must be concluded within 240 days after the publication of the notice of application pursuant to § 981.290(a) of this part.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 30 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision may accept or reject all or part of the recommended decision.

(ii) The Administrator will base the final decision upon the record already made, except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to a judge for the receipt of further evidence, or for other assistance in the determination of the matter.

(iii) With respect to hearings to resolve material issues of fact pursuant to § 981.350 of this part, the Administrator may defer announcement of his final decision on the findings of fact until the time he takes final action on the issuance, transfer or renewal of a license.

(m) *Motions and requests.* Motions and requests must be filed in writing with the judge or must be stated orally and made part of the hearing record. Each motion or request must state the particular order, ruling, or action desired, and the legal and factual grounds therefor.

(n) *Witnesses and fees.* Witnesses subpoenaed will be paid the same fees and mileage, and in the same manner, as are paid for like services in the District Court of the United States for the district in which the hearing is located.

(o) *Depositions.* (1) Any party desiring to take the deposition of a witness shall make application in writing to the judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and mailing address of the person before whom the deposition is requested to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(2) Depositions may be taken orally or upon written interrogatories before any person designated by the judge.

(3) Such notice as the judge shall order will be given for the taking of a deposition, but this ordinarily will not be less than 5 days' written notice when the deposition is to be taken within the United States and ordinarily will not be less than 20 days' written notice when the deposition is to be taken elsewhere.

(4) Each witness testifying upon deposition will be sworn and any party will have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, will be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the person presiding. Thereafter, the person presiding will deliver or mail a copy of the document to each party. Subject to such objection to the questions and answers as were noted at the time of taking the deposition which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(p) *Subpoenas.* A party may request the judge to issue or the judge on the judge's own motion may issue a subpoena for the attendance and testimony of witnesses and for the production of documentary or other evidence. Applications for subpoenas must be in writing, and must specify the general relevance and reasonable scope of the evidence sought to be produced.

(q) *Extension of time.* The time for the filing of any document under this section may be extended by the judge if:

(1) The request for the extension of time is made before or on the final date allowed for the filing; and

(2) The judge, after giving written or oral notice to and considering the views of all other parties (when practicable), determines that there is good reason for the extension.

(r) *Filing, submission and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document or event which begins the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person to be served, his agent, or attorney, will be deemed effective service of the document as of the date of such refusal.

(6) A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

§ 981.570 Ex parte communications.

(a) "*Ex parte* communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of *ex parte* matters as authorized by law, upon assignment of a matter to an administrative law judge and until the final decision of the Administrator is effective under these regulations, no *ex parte* communication relevant to the merits of the proceeding shall be made, or knowingly caused to be made:

(1) By the judge or by an agency employee involved in the decisional process of the proceeding to any interested person outside NOAA; or

(2) By an interested person outside NOAA to the judge or to any agency employee involved in the decisional process of the proceeding.

(c) The judge may not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate.

(d) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the judge, or Administrator, as appropriate, may take action in this respect consistent with these regulations, the Act, and 5 U.S.C. 556(d) and 557(d).

(e) This section does not apply to communications to or from the attorney representing the Administrator in the proceedings (agency representative). However, the agency representative may not participate or advise in the initial or recommended decision of the judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with these regulations.

(f)(1) Paragraphs (b) through (d) of this section do not apply to communications concerning national defense or foreign policy matters. Such Ex Parte communications:

(i) On national defense or foreign policy matters to or from an agency employee; or

(ii) From employees of the United States Government involving intergovernmental negotiations;

are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex Parte communications subject to paragraph (f) of this section shall be made a part of the public record to the extent that they do not include information classified pursuant to Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

Subpart F—Enforcement Procedures

§ 981.580 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 111 of the Act describes the circumstances under which the Administrator may suspend or terminate a license, or seek revocation of a license, for violation of the Act or of any regulation, restriction or condition issued under the Act.

(3) Section 302 of the Act authorizes the Administrator to issue orders directing any person subject to section 301 of the Act to comply with the Act, or any rule, regulation, order, license, term, or condition issued under the Act. Section 302 also authorizes the Administrator to bring a civil action for appropriate relief, including temporary or permanent injunctive relief, to halt or redress any such violation.

(4) Section 110 of the Act authorizes the Administrator to place observers on ocean thermal energy conversion facilities and plantships licensed under the Act to monitor compliance and environmental effects of activities under the license.

(5) Section 114 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 981.590 and 981.600 of this part); establishment of license sanctions (§ 981.610 of this part); issuance of compliance orders (§ 981.620 of this part); placement of observers on or in OTEC facilities and plantships (§ 981.630 of this part); and the giving

of advance notice of private civil actions (§ 981.640 of this part).

(b) *Filing and service of documents.* (1) Filing and service of documents required by this subpart shall be in accordance with §§ 981.560(r) and 981.158 of this part. The method for computing time periods set forth in §§ 981.560(r) and 981.158 of this part also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within 10 days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

[46 FR 39394, July 13, 1981; 47 FR 31861, July 23, 1982]

§ 981.590 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

[46 FR 61652, Dec. 18, 1981]

§ 981.600 Hearing and appeal procedures.

Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

[46 FR 61652, Dec. 18, 1981]

§ 981.610 License sanctions.

(a) *Application of section.* This section governs the suspension, revocation, termination or modification of any license issued under this part for failure to comply with any provision of the Act, or any regulation, order, license condition or restriction issued under the Act.

(b) *Basis for sanctions.* (1) The Administrator may act under this section with respect to a license issued under the Act, if:

(i) The terms of the license call for suspension or termination of the license upon the occurrence of a fixed or agreed upon condition, event or time and the Administrator determines that such condition, event, or time has occurred; or

(ii) The Administrator determines in accordance with paragraph (d)(1)(ii) of this section that immediate suspension of the license, or immediate suspension or modification of any activity under the license, is necessary; or

(iii) An appropriate court issues an order of suspension or revocation with respect to the license.

(2) The Administrator may suspend a license in accordance with paragraph (b)(1) and the other provisions of this section, on the basis that the licensee has failed to pay any penalty assessed, or fine imposed, under section 302 of the Act. The license may be reinstated by affirmative order of the Administrator upon receipt, as prescribed in paragraph (d) of this section, of full payment of the penalty assessed, together with interest thereon at the annual rate provided by current regulations of the Department of the Treasury as to late payments of amounts due the Government, computed from the date payment first became overdue, or upon full payment, in accordance with any applicable court order, of the fine imposed.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license issued under the Act:

(1) Revoke the license;

(2) Suspend the license or any activity under the license, either for a specified period of time or until certain stated requirements are met, or both;

(3) Modify the license, for example by imposing additional conditions and restrictions in order to aid future enforcement efforts; or

(4) Terminate the license in accordance with the provisions of this subpart.

(d) *Notice of license sanction.* (1) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, or any regulation, order or any license condition or restriction issued under the Act, the Administrator may issue the licensee a notice of license sanction (NOLS) stating that the Administrator has requested the Attorney General to file an action in an appropriate United States district court, seeking a sanction against the license involved. The NOLS will state the sanction proposed by the Administrator to be imposed as provided in paragraph (c) of this section, and the basis therefor and will advise that issuance of the NOLS does not preclude the Administrator from taking, at any time, any other enforcement action under section 302 or any other applicable provision of the Act.

(i) If the Administrator expects to seek revocation of the license, the NOLS will advise that:

(A) If the violation set forth in the NOLS continues for a period of 30 days from the date of issuing the NOLS, the Administrator may request the Attorney General to seek revocation of the license in an appropriate United States district court;

(B) The licensee may, within 30 days after the date of issuing the NOLS, submit to the Administrator evidence of compliance; and

(C) If the Administrator determines, on the basis of evidence submitted during the 30-day period, that the licensee has complied, the Administrator will not seek revocation of the license.

(ii) The Administrator may immediately suspend the license or suspend or modify any activity under the license pending completion of judicial proceedings under section 111(a) of the Act if the Administrator finds, and issues an emergency order summarizing the finding and the basis therefor, that such action is necessary to:

(A) Protect public health and safety; or

(B) Eliminate imminent and substantial danger to the environment.

(iii) If the Administrator acts under paragraph (d)(1)(ii) of this section, the Administrator will serve the emergency order in the manner described in paragraph (d)(4) of this section, and will seek to expedite judicial proceedings.

(iv) The licensee may request the Administrator to review any emergency order issued under paragraph (d)(1)(ii) of this section. The Administrator will determine whether any review of the emergency order should be granted, and whether any review granted will be in the form of an informal or formal hearing. The Administrator's granting of a review will not change the effective date of the emergency order unless the Administrator specifies such a change in writing when granting the review of the emergency order.

(2) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with the license, and if the license provides for a license sanction on the basis of such failure to comply, the Administrator may issue a NOLS setting forth the sanction to be imposed and the basis therefor. If an opportunity for a hearing is provided by paragraph (e) of this section, the NOLS will advise that the licensee has 30 days from receipt of the notice in which to request or waive a hearing. The notice will further state the effective date of the sanction, which will not be earlier than 30 days after the date of the notice except as provided in paragraph (d)(1)(ii) of this section or in the license. If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction becomes effective under paragraph (h) of this section.

(3) If a United States district court issues an order calling for a license sanction, the Administrator will issue a NOLS setting forth the sanction to be imposed and the effective date of the sanction. The NOLS will advise that an appeal of the district court's order will not stay the taking effect of the sanction, unless provided otherwise by the court.

(4) The NOLS will be served personally or by registered or certified mail, return receipt requested, on the licensee.

(e) *Opportunity for hearing on an NOLS issued under paragraph (d)(2) of the section.* (1) The licensee has 30 days from receipt of the NOLS to request a hearing with respect to an NOLS issued under paragraph (d)(2) of this section. However, no hearing is required with respect to matters previously adjudicated in an administrative or judical hearing in which the licensee has been given notice and has had an opportunity to participate.

(2) If the licensee wishes a hearing, a written and dated request shall be served on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the NOLS. The request shall either attach a copy of the relevant NOLS or refer to the relevant NOAA case number.

(3) If no hearing is required by or requested under paragraph (e)(1) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law or equity to be further explored.

(4) The Administrator may apply to the administrative law judge for an interim order suspending the license, or suspending or modifying any activity under the license, pending completion of proceedings under this section if the Administrator serves prior notice of the application for an interim order on the licensee in the manner described in paragraph (d)(4) of this section. The judge may issue an interim order consistent with the purposes of the Act, unless preliminary evidence presented to the judge indicates a likelihood that the licensee will prevail in the matters at issue.

(5) If the license provides an effective date for the sanction, a request for hearing will not delay the effectiveness of the sanction, except to the extent extended by the Administrator for good cause shown.

(f) *Hearing and initial decision.* If a timely request for a hearing under paragraph (e)(1) of this section is received or the Administrator orders a hearing under paragraph (e)(3) of this section, the Administrator will appoint a hearing officer to hear the matter and render an initial decision.

(g) *Appeals.* (1) Any party may appeal the initial decision of the hearing officer by filing a notice of appeal with the Administrator within 30 days after the date of the initial decision. The notice of appeal shall concisely state such exceptions as the appellant takes to the initial decision and shall contain citations to the record or other authority relied upon. The appellant shall serve a copy of the notice of appeal on each other party.

(2)(i) The Administrator will decide the appeal upon the record already made, except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to a hearing officer for the receipt of further evidence, or other assistance in the determination of the matter.

(ii) The decision of the Administrator will be in writing and will state the reasons for accepting or rejecting the exceptions taken by the appellant. To the extent the Administrator's decision is silent as to a material issue of fact, law, or discretion at issue in the hearing, the decision will be deemed to adopt the findings and conclusions, and the reasons and basis therefor, contained in the initial decision.

(h) *Final decision.* (1) Unless a notice of appeal is timely filed in accordance with paragraph (g) of this section, the initial decision of the hearing officer becomes effective and constitutes the final decision and order of the Administrator on the 30th calendar day after the date it is rendered.

(2) If a notice of appeal is timely filed as provided in paragraph (g) of this section, the Administrator's decision becomes effective and constitutes the final decision and order of the Administrator on the date it is issued, or as otherwise specified by the Administrator in the decision. The Administrator will serve notice of the decision on the licensee in the manner described in paragraph (d)(4) of this section.

§ 981.620 Compliance orders.

(a) The Administrator may issue a compliance order, served personally or by registered or certified mail, return receipt requested, to any person subject to section 301 of the Act who is found by the Administrator, on the basis of available information, to be in violation of the Act, or any regulation, order, license term or condition issued under the Act or this part. Although no specific form is prescribed, the compliance order will contain:

(1) A concise statement of the facts determined to show a violation;

(2) A specific reference to the provisions of the Act, regulation, order or license determined to be violated; and

(3) The time period in which the person shall comply with the order.

(b) With respect to the time period for compliance with the order, the Administrator will specify a reasonable time period, up to 30 days, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) The compliance order will advise the person to whom it is issued that:

(1) Failure to comply within the specified time period will subject that person to adverse enforcement action under the Act (in addition to any such action already begun); and

(2) The order may be challenged during any enforcement proceeding brought under the Act as a result of the violation specified in the order or an alleged failure to comply with the order.

(d) The person to whom a compliance order is issued may seek amendment or modification of the order to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the order. The Administrator will either amend the order, or decline to amend it, and will so notify the person concerned.

(e) Evidence of compliance with an order issued under this section shall be presented to the Administrator in writing within the time period specified in the order. The Administrator will, as soon as practicable, determine whether or not there is timely compliance with the order, and advise the person concerned of the determination.

(f) Issuing a compliance order under this section, or complying with such an order, does not preclude other enforcement proceedings under the Act or this part if such proceedings serve the purposes of the Act, except if expressly so stated in the order, or as provided in section 111 of the Act with respect to license revocation.

§ 981.630 Observers.

(a) *Purpose of observers.* Each licensee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board, enter or accompany any OTEC facility or plantship to which a license applies, for the purposes of observing and reporting on:

(1) The effectiveness of the terms and conditions of the license;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license terms and conditions; and

(3) The environmental and other effects of the licensee's activities under the license.

(b) *Notice to licensee.* (1) The Administrator may notify a licensee that the Administrator plans to place an observer in or aboard the OTEC facility or plantship to which the license applies.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator may include, among other things:

(i) The name of the observer, if known at the time the notice is issued;

(ii) The length of time which the observer likely will be in or aboard the OTEC facility or plantship;

(iii) Information concerning activities the observer is likely to conduct; and

(iv) Information concerning any special requirements for the handling, storage, location, or operation of, or the power supply for, equipment to be used by the observer.

(c) *Licensee's response.* Upon request by the Administrator, each licensee shall promptly notify the Administrator regarding the suggested time and method for transporting the observer to the OTEC facility or plantship.

(d) *Duties of licensee.* Each licensee of an OTEC facility or plantship to which an observer is assigned shall assure that the observer is provided:

(1) Access to and use of the OTEC facility or plantship's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Access to and use of the OTEC facility or plantship's navigation equipment and personnel when the observer deems such access necessary to determine the facility or plantship's location;

(3) All other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Temporary accommodations and food to the observer in or aboard the OTEC facility or plantship which are equivalent to those provided to officers or senior operations personnel of the OTEC facility or plantship.

(e) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be carried out in a manner that minimizes interference with the licensee's activities under the license.

(2) The Administrator will assure that equipment brought into or aboard an OTEC facility or plantship by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the OTEC facility or plantship or its activities, or the officers, crew, or personnel of the OTEC facility or plantship. The observer will comply with all orders of the master or senior operations official which are necessary to ensure the safe operation of the OTEC facility or plantship and the safety of its personnel.

(f) *Non-interference with observer.* Licensees and other persons are reminded that the Act (see, for example, sections 301(2) and 301(3)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(g) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee an opportunity:

(1) To review those parts of the observer's reports which may contain proprietary information; and

(2) To request confidential treatment of such information under § 981.100 of this part.

§ 981.640 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States district court under section 114 of the Act against any person for alleged violation of the Act, or any regulation, or license term or condition issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of the alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Actions against the Administrator.* (1) No civil action may be filed in a United States district court under section 114 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after the Administrator receives a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulations or license believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the act or duty believed to be required by such provisions;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

Subpart G—Upper Limits on the Number or Total Capacity of OTEC Facilities and Plantships to be Licensed Under This Part—[Reserved]

Subpart H—OTEC Site Evaluation and Preconstruction Testing Regulations—[Reserved]

Subpart I—Procedures for Mediation of Disputes Among Licensees Regarding Interference Between OTEC Facilities or Plantships—[Reserved]

CHAPTER XII—UNITED STATES TRAVEL SERVICE, DEPARTMENT OF COMMERCE

Part		*Page*
1200	Issuance of grants to promote travel to States or their political subdivisions by foreign residents...	418

PART 1200—ISSUANCE OF GRANTS TO PROMOTE TRAVEL TO STATES OR THEIR POLITICAL SUBDIVISIONS BY FOREIGN RESIDENTS

Sec.
1200.1 Background and purpose.
1200.2 Definitions.
1200.3 Applications for Federal grant for travel promotional projects.
1200.4 Action on application.
1200.5 Grant accounting and records.
1200.6 Reports.
1200.7 Inspection and audit.
1200.8 Publications.
1200.9 Collection of information.
1200.10 Termination.
1200.11 Repayment.
1200.12 Federal coordination.

Authority: Pub. L. 87-63, as amended by Pub. L. 88-420 and Pub. L. 91-477; Department of Commerce Organization Order 10-7 of November 12, 1970.

Source: 36 FR 17036, Aug. 27, 1971, unless otherwise noted.

§ 1200.1 Background and purpose.

The regulations in this part are issued under the authority of the International Travel Act of 1961, as amended. The purpose of the Act is to strengthen the domestic and foreign commerce of the United States; promote friendly understanding and appreciation of the United States by encouraging foreign residents to visit the States, as defined in § 1200.2; and facilitate international travel in general. On October 21, 1970, the Act was amended by Pub. L. 91-477. One of the amendments made to the Act by Pub. L. 91-477 authorized the U.S. Travel Service to make matching Federal grants to States or their political subdivisions, or private or public nonprofit organizations, in an effort to encourage foreign residents to visit the United States and to upgrade and improve the tourist host and reception facilities in this country thereby furthering the stated purposes of the Act.

§ 1200.2 Definitions.

(a) "Act" means the International Travel Act of 1961, as amended (22 U.S.C. 2121 et seq.).

(b) "Assistant Secretary" means the Assistant Secretary of Commerce for Tourism or such official as may be designated to act in his behalf.

(c) "State" means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(d) "Political subdivision" means a unit of local government, including specifically, a county, municipality, city, town, township, or other special district created by or pursuant to law.

(e) "Private or public non-profit organizations" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

(f) "Applicant" means a State or political subdivision or combination thereof, or private or public nonprofit organization seeking a Federal grant for a travel promotional project.

(g) "Travel promotional project" means an activity or program designed to enhance a State or political subdivision as a desired travel destination of residents of foreign countries or to inform such residents and to encourage them to visit a State or political subdivision through such means as:

(1) Preparing and disseminating materials, including brochures, leaflets, booklets, posters, and displays featuring domestic regional and local attractions in appropriate foreign languages in foreign cities and countries that constitute a potential travel market to the States;

(2) Carrying out either singly or in conjunction with other States and/or other political subdivisions and/or with U.S. Travel Service, special promotions of facilities, attractions, events and services of an area by means of exhibits, shows, films, etc.;

(3) Planning, developing and sponsoring advertising campaigns in foreign countries to inform and encourage foreign residents to visit;

(4) Undertaking projects to upgrade and improve tourist facilities and services to better serve the foreign resident;

(5) Carrying out other projects that indicate a high probability of increasing foreign tourism;

(h) "Matching funds" means funds that are provided by the State or political subdivision or by a combination thereof, or from other non-Federal sources and may include fees, contributions, donations, gifts of money, and special user charges from persons and private profit or nonprofit firms, organizations, or institutions.

§ 1200.3 Applications for Federal grant for travel promotional projects.

(a) Each applicant seeking a Federal grant for a travel promotional project shall file an application, as further specified below, with the Assistant Secretary.

(b) Every application, exhibit, or enclosure, except where specifically waived by the Assistant Secretary, shall be in quadruplicate, duly authenticated and referenced, and addressed to the Assistant Secretary of Commerce for Tourism, U.S. Travel Service, U.S. Department of Commerce, Washington, DC 20230.

(c) Every application shall be on USTS Form, "Request for Travel Promotion Project Grant," which is available from the U.S. Travel Service. This application form incorporates assurances of compliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 et seq.) and implementing regulations (§ 8.1 et seq. of this title). Also, the form shall contain the date, address, and official title of the applicant and shall be signed by an authorized representative.

(d) Every application, except where specifically waived by the Assistant Secretary, shall be accompanied by the following exhibits:

(1) *Exhibit No. 1.* A statement setting forth in detail the current level of tourism in area in terms of (i) numbers of tourists in area, both foreign and domestic; (ii) impact of tourism on area economy (i.e., employment and income); and (iii) current efforts to develop and promote tourism in area.

(2) *Exhibit No. 2.* A project statement setting forth in detail the existing need for Federal assistance, the goals and objective thereof, in terms of tourism receipts and their effects on area jobs and income, the specific methods proposed for accomplishing these objectives in terms of personnel and funds and the procedures that will be used to evaluate the project.

(3) *Exhibit No. 3.* A statement setting forth in detail the budget proposed for the project, together with procedures for fiscal control, funding, accounting and auditing to assure proper disbursement of funds paid to the applicant.

(4) *Exhibit No. 4.* Documentation establishing that the applicant has coordinated the travel promotion project with other States (when regional cooperation is desirable) and with other publicly supported activities within the States or political subdivision, as appropriate, and the extent and manner in which such coordination has been carried out by identifying such projects and activities and indicating how any duplication of other travel promotion project in the area has been avoided.

(5) *Exhibit No. 5.* Certification by the Governor of the State or the chief political officer of the political subdivision or the president of the private or public nonprofit organization, as the case may be, that the applicant has:

(i) Established adequate standards and rules to insure that no officer or employee of the State or political subdivision or their designated agencies, or private or public organization, shall receive compensation from sources other than his employer for tourism development or promotional services for which funds are provided under the Act and that no such officer or employee shall otherwise maintain any private interest in conflict with his public responsibility. Each applicant will furnish a copy of the standards and rules which are established to avoid any conflict of interest in connection with the administration of a grant which may be made under the Act. Such rules shall clearly set forth the standards and procedures which officers, employees, and consultants can follow to avoid any conflict of interest.

(ii) Determined that matching funds will be available from States or other non-Federal sources. In addition, each applicant shall indicate the basis for the determination by identifying such sources.

(iii) Determined that such travel promotional project supported by a grant under the Act does not provide or arrange transportation for, or accommodations to, persons traveling between foreign countries and the States in competition with any private business engaged in providing or arranging for such transportation and accommodations.

(iv) Planned no services specially related to a particular firm or company, public work or other capital project except insofar as the services are of general concern to the industry and commerce of the State or political subdivision. If the applicant has planned services which are specially related to a particular firm or company, public work or other capital project, a statement shall be furnished by the applicant to the Assistant Secretary describing such services and the basis for the determination that such services are of general concern to the industry and commerce of the State or political subdivision.

§ 1200.4 Action on application.

(a) Upon receipt of an application, the Assistant Secretary shall designate an employee of the U.S. Travel Service who will investigate the application and accompanying exhibits for compliance with the provisions of § 1200.3 and report his findings with respect thereto to the Assistant Secretary.

(b) The Assistant Secretary, within a reasonable time after receipt of the report referred to in paragraph (a) of this section, may authorize a grant to the applicant provided he finds that (1) the travel promotional project is designed to carry out the purposes of the Act; (2) the project will facilitate and encourage travel to the State or political subdivision or combination thereof by foreign residents; and (3) matching funds will be available from State or other non-Federal sources.

(c) In no event shall the amount of any grant made under the regulations of this part for any travel promotion project exceed 50 percent of the total cost of the project.

§ 1200.5 Grant accounting and records.

(a) Accounting for grants funds shall consist of any generally accepted accounting system and internal control procedures, including provisions for audit, provided that they meet the following requirements:

(1) Separate ledger accounts are established for each grant or grant project which conforms to or permits ready identification with grant budget categories. Such accounts should provide separate and specific accountability of receipts, expenditures, and balances. Separate accounts may be maintained for each annual period, but are not required.

(2) Supporting records of project expenditures are maintained in sufficient detail and itemization to show the exact nature of each expenditure. Such records should clearly indicate to which major budget category and subitems within the category an expenditure is charged.

(3) Reimbursements of travel expenses are supported by vouchers containing the signature of the individual performing the travel and the person authorized by the applicant to approve such travel. Vouchers should show the starting point and destination of travel, dates of travel, itemization of amounts expended for transportation and a statement of the amounts expended for transportation and a statement of the amount of per diem due (not to exceed the per diem authorized by the State or political subdivision or the rate of $25 per day (whichever is less)).

(4) Each expenditure is referenced to a supporting purchase order, contract, voucher, invoice, or bill, properly approved. Special voucher forms are not necessary since ordinarily the documents used by a designated agency to support expenditures from its own funds will be sufficient. Whenever possible, separate orders should be issued for purchases charged to grant funds in order that bills or invoices will not contain items charged to other funds.

(5) Grant number, account number, date, and expense classification are identified on invoices or vouchers charged to other funds.

(6) Payroll authorizations are maintained to effect control on salaries and wages charged against grant funds. These authorizations shall be approved by the appropriate authority in the State or political subdivision.

(7) Some objective evidence of time devoted to the grant project is maintained. As a minimum, a statement should be prepared at the end of each pay period showing the names of employees, the percentage of time each devoted to grant projects, the gross amounts of salaries and approval by appropriate authority in the designated agency.

(8) Adequate records are maintained supporting charges for fringe benefits, such as pensions, retirement, social security tax (FICA), etc., when included in the project budgets.

(9) All canceled checks are filed and are readily accessible for examination. When cash disbursements are made, they must be supported by receipts approved by appropriate authority.

(10) The accounting system is adequate to permit immediate identification of project balances and funds in general accounts, or separate bank accounts may be established for project funds.

(11) Inventory records are maintained for all equipment purchased with grant funds.

(12) The applicant receiving Federal funds under the Act shall require all subcontractors to provide documentation covering receipt and expenditure of grant and matching funds for which the designated agency is held responsible.

(13) The grant accounting system provides for adequate internal audits and the use of written policies and instructions defining accounting policies, procedures and controls.

(14) All income from project activity (sale of publications, entrance fees, user charges, etc.) is accounted for and clearly identified in financial reports.

§ 1200.6 Reports.

Financial reports and descriptive reports will be required as the Assistant Secretary may specify. Each applicant is also required to submit to the Assistant Secretary within 90 days after the official termination date of the grant (a) a final financial report, and (b) a descriptive report describing and evaluating the project accomplishments.

§ 1200.7 Inspection and audit.

(a) The Assistant Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, any books, documents, papers, and records of the designated agency that are pertinent to Federal assistance received under the Act.

(b) Financial records must be kept on file for a minimum of 3 years following the termination of the grant. The required retention period may be extended by written notification by the Assistant Secretary.

§ 1200.8 Publications.

(a) If the applicant desires to publish information resulting from the grant, the general provisions accompanying the grant will contain regulations regarding acknowledgment and disclaimer requirements.

(b) A determination as to responsibilities will be made on a case-by-case basis; however, the Government reserves a nonexclusive license to use and reproduce for Government purposes, without payment, any publishable matter or information collected, including copyrighted material, arising out of the applicant's activities.

§ 1200.9 Collection of information.

If the applicant collects information from the public on its own initiative in connection with a research or other general purpose project, it will not, without prior written approval of the Assistant Secretary, in any way represent that the information is being collected by or for a Federal agency.

§ 1200.10 Termination.

(a) Grants may be terminated, in whole or in part, by the Assistant Secretary if he finds that any of the following conditions exist:

(1) The applicant, or those with whom such agency has contracted or subcontracted, is not complying with the provisions of the Act, with the regulations in this part, or with any of the provisions of the grant; or

(2) Any funds paid to the applicant under the provisions of the Act or the regulations in this part have been lost,

misapplied, or otherwise diverted from or improperly used or expended for other than the purposes for which they were paid.

(b) The Assistant Secretary may, in his sole discretion, terminate the grant, in whole or in part, if he finds that any of the conditions described in paragraph (a) of this section exist. Such termination shall be effective 30 days after the mailing of a written notice of termination to the applicant.

§ 1200.11 Repayment.

In the event that the grant is terminated, any funds that have been paid to the applicant by the U.S. Travel Service which have not been expended or contracted for upon receipt of the notice of termination shall be repaid to the Assistant Secretary within 30 days of such notice.

§ 1200.12 Federal coordination.

The Assistant Secretary may, prior to approving any travel promotional project, take such steps as he deems appropriate, to coordinate such project with other Federal agencies or seek the advice of such committees as may be established for the purpose of reviewing tourist development or promotion plans and programs.

CHAPTER XIII—EAST-WEST FOREIGN TRADE BOARD

Part *Page*
1300 **Reports on exports of technology** 424

PART 1300—REPORTS ON EXPORTS OF TECHNOLOGY

§ 1300.1 Reporting of exports of technology to nonmarket economy countries.

(a) For purposes of complying with the reporting requirements of section 411 of the Trade Act of 1974 (19 U.S.C. 2441) relating to the export of technology to a nonmarket economy country, exporters of such technology shall be deemed to have complied with the requirements of such section by complying with the applicable provisions of the export control regulations of the Department of Commerce (15 CFR 368.1 through 399.2) issued pursuant to the Export Administration Act of 1969, as amended, (50 U.S.C. App. 2401 through 2413).

(b) Nonmarket Economy Country. For purposes of section 411(b) of the Trade Act of 1974 (19 U.S.C. 2441) the term "nonmarket economy country" includes those countries included in Country Groups Q, W, Y, and Z of the export control regulations of the Department of Commerce (15 CFR Part 370 (Supplement 1)).

(Sec. 411, Pub. L. 93-618, 88 Stat. 2065 (19 U.S.C. 2441); E.O. 11846 (40 FR 14291))

[40 FR 29534, July 14, 1975]

CHAPTER XIV—MINORITY BUSINESS DEVELOPMENT AGENCY

Part		Page
1400	Determination of Group Eligibility for MBDA Assistance	426

PART 1400—DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE

Sec.

1400.1 Purpose and scope.
1400.2 Definitions.
1400.3 Request for determination.
1400.4 Evidence of social or economic disadvantage.
1400.5 Decision.
1400.6 Construction.

AUTHORITY: 15 U.S.C. 1512, E.O.). 11625, 3 CFR 616 (1971-75), 36 FR 19967 (1971); and E.O. 12432, 3 CFR 198 (1983), 48 FR 32551 (1983).

SOURCE: 49 FR 42698, Oct. 24, 1984, unless otherwise noted.

§ 1400.1 Purpose and scope.

(a) The purpose of this part is to set forth regulations for determination of group eligibility for MBDA assistance.

(b) In order to be eligible to receive assistance from MBDA funded organizations, a concern must be a minority business enterprise. A minority business enterprise is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Executive Order 11625 designates Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts as persons who are socially or economically disadvantaged and thus eligible for MBDA assistance. Other groups designated are listed below in paragraph (c). The purpose of this regulation is to provide guidance to groups not previously designated as eligible for assistance who believe they are entitled to formal designation as "socially or economically disadvantage" under the Executive Order. Upon adequate showing by representatives of the group that the group is, as a whole, socially or economically disadvantaged the group will be so designated and its members will be eligible for MBDA assistance. Designation under Executive Order 11625 establishes eligibility status only for MBDA funded programs. It will not establish eligibility for any other Federal or Federally funded program.

(c) In addition to those listed in E.O. 11625, members of the following groups have been designated as eligible to receive assistance: Hasidic Jews, Asian Pacific Americans, and Asian Indians.

§ 1400.2 Definitions.

For the purpose of this part:

(a) Minority business enterprise means a business which is owned or controlled by one or more socially or economically disadvantaged persons.

(b) Socially disadvantaged persons means those persons who have been subjected to cultural, racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

(c) Economically disadvantaged persons means those persons whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities because of their identity as members of a group without regard to their individual qualities, as compared to others in the same line of business and competitive market area.

(d) Person means a citizen of the United States or an alien lawfully admitted for permanent residence.

§ 1400.3 Request for determination.

A group wishing to apply for designation as socially or economically disadvantaged under Executive Order 11625 shall submit a written application to the Director of the Minority Business Development Agency, United States Department of Commerce, Washington, D.C., 20230, containing the following information:

(a) *Statement of request:* a brief statement clearly indicating that the applicant seeks formal recognition as socially or economically disadvantaged.

(b) *Description of applicants:* a detailed sociological, ethnic and/or racial description, as appropriate, of the group they represent which indicates that the group and the traits of its members are sufficiently distinctive to warrant a determination of social or economic disadvantage.

(c) *Summary of the applicant's submission:* a brief summary of their Submission.

(d) *Presentation of argument:* a narrative description of the documentation in support of their claim of social or economic disadvantage.

(Applicants should support their claim of social or economic disadvantage with the criteria described under 1400.4 "Evidence of Social or Economic Disadvantage")

(e) *Conclusion:* summary of applicant's arguments in support of the claims of social or economic disadvantage.

(Approved by the Office of Management and Budget under control number 0640-0011)

§ 1400.4 Evidence of social or economic disadvantage.

(a) The representatives of the group requesting formal designation should establish social or economic disadvantage by a preponderance of the evidence. Social or economic disadvantage must be chronic, long standing, and substantial, not fleeting or insignificant. In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, a determination will be made as to whether this group has suffered the effects of discriminatory practices over which its members have no control. Applicants must demonstrate that such social or economic conditions have produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and market place.

(b) Evidence which will be considered in determining whether groups are socially or economically disadvantaged includes but is not limited to:

(1) Statistical profile outlining the national income level and standard of living enjoyed by members of the group in comparison to the income level and standard of living enjoyed by individuals not considered to be members of socially or economically disadvantaged groups.

(2) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(3) Evidence of educational discrimination in comparison to educational opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(4) Evidence of denial of access to organizations, groups, or professional societies, whether in business or in school, based solely upon racial and/or ethnic considerations.

(5) Kinds of businesses and business opportunities available to group members in comparison to the kinds of businesses and business opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(6) Availability of capital to group members in comparison to the availability of capital to individuals not considered to be members of socially or economically disadvantaged groups.

(7) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be members of socially or economically disadvantaged groups.

(8) Any other evidence of denial of opportunity or access to those things which would enable the individual to participate more successfully in the American economic system, available to individuals not considered to be members of social or economically disadvantaged groups.

§ 1400.5 Decision.

(a) *Procedure.* After receipt of an application requesting formal designation as a socially or economically disadvantaged group, the Department of Commerce will publish a notice in the FEDERAL REGISTER that formal designation of this group will be considered. This notice will request comment from the public on the propriety of such a designation. The Department may gather additional information which supports or refutes the group's request. Any member of the public, including Government representatives, may submit information in written form. It is the responsibility of the applicant, however, to submit all relevant information which it wishes considered in its request for a determination of group eligibility.

(b) *Decision.* A decision will be made within 180 days of the receipt of the request. The decision will be published in the FEDERAL REGISTER. Applicants will also be informed in writing.

(c) *Appeal.* All questions of eligibility and procedural requirements shall be resolved by the Director, MBDA whose decision shall be final. An applicant may appeal this decision to the Secretary of Commerce. Applicants requesting an appeal should provide any information discovered subsequent to the Director's initial decision which would further their claim. The right to appeal shall be granted at the absolute discretion of the Secretary.

§ 1400.6 Construction.

Nothing in this regulation shall be construed as subjecting any functions vested in, or assigned pursuant to law to any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting such functions in any manner.

Subtitle C—Regulations Relating to Foreign Trade Agreements

CHAPTER XX—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Editorial Note: Nomenclature changes affecting Chapter XX appear at 45 FR 12214, Feb. 25, 1980.

Part		Page
2001	Creation, organization, and functions	432
2002	Operation of committees	434
2003	Regulations of Trade Policy Staff Committee	437
2004	Freedom of information policies and procedures	439
2005	Safeguarding individual privacy	443
2006	Procedures for complaints filed under section 301 of the Trade Act of 1974, as amended	448
2007	Regulations of the U.S. Trade Representative pertaining to eligibility of articles for the Generalized System of Preference Program (GSP) implementing Title V of the Trade Act of 1974, as amended	453
2008	Regulations to implement E.O. 12065; Office of the United States Trade Representative	458
2009	Procedures for representations under section 422 of the Trade Agreements Act of 1979	462
2011	Sugar	463
2013	Specialty sugar	467
Appendix A—Administration of the Trade Agreements Program		471

PART 2001—CREATION, ORGANIZATION, AND FUNCTIONS

Sec.
2001.0 Scope and purpose.
2001.1 Creation and location.
2001.2 Organization.
2001.3 Functions.

Authority: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

Source: 40 FR 18419, Apr. 28, 1975, unless otherwise noted.

§ 2001.0 Scope and purpose.

(a) This chapter sets out terms of reference of the Office of the United States Trade Representative (hereinafter the "Office"), and the procedures whereby it carries out its general responsibilities under the trade agreements program.

(b) One of the primary purposes of these regulations is to inform the public of the unit known as the Trade Policy Staff Committee, which replaces and assumes the functions formerly performed by The Trade Staff Committee and the Trade Information Committee. One of the functions of the Trade Policy Staff Committee is to afford an opportunity for interested parties to present oral and written statements concerning the trade agreements program and related matters.

§ 2001.1 Creation and location.

(a) The Office was established as an agency in the Executive Office of the President by Executive Order 11075 of January 15, 1963 (28 FR 473), as amended by Executive Order 11106 of April 18, 1963 (28 FR 3911), and Executive Order 11113 of June 13, 1963 (28 FR 6183). The Office subsequently was reestablished as an agency in the Executive Office of the President by section 141 of the Trade Act of 1974 (Pub. L. 93-618, 88 Stat. 1978, hereinafter referred to as the "Trade Act"), and was delegated certain functions under the Trade Act by Executive Order 11846 of March 27, 1975.[1]

(b) The Office is located at 1800 G Street NW., Washington, DC 20506.

§ 2001.2 Organization.

(a) The Office is headed by the United States Trade Representative (hereinafter, the "Trade Representative") as provided in section 141(b)(1) of the Trade Act. The Trade Representative reports directly to the President and the Congress as described in § 2001.3(a)(2) of this part, and has the rank of Ambassador Extraordinary and Plenipotentiary.

(b) The Office also consists of two Deputy Trade Representatives (hereinafter "Deputy Trade Representatives") as provided in section 141(b)(2) of the Trade Act, each of whom holds the rank of Ambassador, and of a professional and nonprofessional staff.

(c) The Trade Policy Committee, an interagency committee composed of the heads of specified Executive departments and offices, was established by section 3 of Executive Order 11846 (see Appendix), as authorized by section 242(a) of the Trade Expansion Act of 1962, as amended,[2] under the chairmanship of the United States Trade Representative, as provided by section 141(c)(1)(E) of the Trade Act. Two subordinate bodies of the Trade Policy Committee, the Trade Policy Committee Review Group, and the Trade Policy Staff Committee, provided for in §§ 2002.1 and 2002.2 respectively, are established by, and under the direction and administrative control of the Trade Representative.

§ 2001.3 Functions.

(a) The Trade Representative:

(1) Except where otherwise provided by statute, Executive order, or instructions of the President, is the chief representative of the United States for each negotiation under the trade agreements program as defined in section 1 of Executive Order 11846, and participates in other negotiations which may have a direct and significant impact on trade;

(2) Reports directly to the President and the Congress, and is responsible to

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[1] 40 FR 14291, March 31, 1975.

[2] 76 Stat. 902, 19 U.S.C. 1872; Pub. L. 93-618, 88 Stat. 1978, section 602(b).

the President and the Congress, with respect to the administration of the trade agreements program as defined in section 1 of Executive Order 11846;

(3) Advises the President and the Congress with respect to tariff and nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

(4) Performs the functions of the President under section 102 of the Trade Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, and prepares for the President's transmission to Congress all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements (except that where implementation of an agreement on nontariff barriers to, and other distortions of trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law prepares and transmits to the Trade Representative any proposed legislation necessary for such implementation);

(5) Is responsible for making reports to Congress with respect to the matters set forth in paragraphs (a) (1) and (2) of this section and prepares, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Trade Act ;

(6) Is chairman of the Trade Policy Committee, and designates the chairman of the Trade Policy Committee Review Group and the Trade Policy Staff Committee, which are provided for in Part 2002 of these regulations;

(7) Is responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program;

(8) Performs the functions of the President under section 131(c) of the Trade Act concerning requests for, and receipt of, advice from the International Trade Commission with respect to modifications of barriers to (and other distortions of) international trade;

(9) Performs the functions of the President under section 132 of the Trade Act with respect to advice of departments of the Federal government and other sources, and under section 133 of the Trade Act with respect to certain public hearings;

(10) Performs the functions of the President under section 135 of the Trade Act with respect to advisory committees, (including functions under the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, which are applicable to such committees, except that of reporting annually to Congress), and, acting through the Secretaries of Commerce, Labor, and Agriculture, as appropriate, performs the functions of the President in establishing and organizing general policy advisory committees and sector advisory committees under section 135(c) of the Trade Act;

(11) Determines ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Trade Act, taking into account advice from the International Trade Commission and in consultation with the Trade Policy Committee;

(12) Requests, where appropriate, information from the International Trade Commission in connection with import relief findings or actions under sections 202(d) and 203(i) (1) and (2) of the Trade Act;

(13) Acting through the Section 301 Committee provided for in § 2002.3 of this chapter as appropriate, provides opportunities for the presentation of views under sections 301(d) and 301(e) of the Trade Act, with respect to certain foreign restrictions, acts, practices or policies and United States actions in response thereto;

(14) At the request of a complainant, made in accordance with § 2003.3 of these regulations, under section 301(d)(2) of the Trade Act, or of an interested person under section 301(e)(2), provides for appropriate public hearings by the Trade Policy Staff Committee on alleged foreign restrictions, acts, policies, or practices under section 301(d)(2), and on any action by the United States with respect to the import treatment of any foreign product or the treatment of

any foreign service under section 301(e)(2);

(15) Requests, where appropriate, the views of the International Trade Commission as to the probable impact on the economy of the United States of any action under section 301(a) of the Trade Act;

(16) Is responsible, in consultation with the Secretary of State, for the administration of the generalized system of preferences under Title V of the Trade Act;

(17) Is responsible for such other functions as the President may direct.

(b)(1) Each Deputy Trade Representative shall have as his principal function the conduct of trade negotiations under this Act, and shall have such other functions as the Trade Representative may direct;

(2) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Trade Policy Committee Review Group provided for in § 2002.1;

(3) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Adjustment Assistance Coordinating Committee established by section 281 of the Trade Act.

[40 FR 18419, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975]

PART 2002—OPERATION OF COMMITTEES

Sec.
2002.0 Trade Policy Committee.
2002.1 Trade Policy Committee Review Group.
2002.2 Trade Policy Staff Committee.
2002.3 Section 301 Committee.
2002.4 Participation by other agencies.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

§ 2002.0 Trade Policy Committee.

(a) The Trade Policy Committee was created by section 3 of Executive Order 11846 of March 27, 1975 (40 FR 14291, March 31, 1975), as authorized by section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Trade Act.

(b) The Trade Policy Committee is composed of:

(1) The Special Representative for Trade Negotiations, Chairman;

(2) The Secretary of State;

(3) The Secretary of the Treasury;

(4) The Secretary of Defense;

(5) The Attorney General;

(6) The Secretary of the Interior;

(7) The Secretary of Agriculture;

(8) The Secretary of Commerce;

(9) The Secretary of Labor;

(10) The Assistant to the President for Economic Affairs;

(11) The Executive Director of the Council on International Economic Policy.

In addition, the Committee may invite the participation in its activities of any agency or office not listed above when matters of interest to such agency or office are under consideration.

(c) The Trade Policy Committee meets at such times and with respect to such functions as the President or the Chairman of the Committee directs. It has the functions conferred by the Trade Expansion Act of 1962, as amended, upon the interagency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of Executive Order 11846 (see Appendix), and such other functions as the President or the chairman may from time to time direct. Recommendations and advice of the Committee are submitted to the President by the chairman.

[40 FR 18420, Apr. 28, 1975]

§ 2002.1 Trade Policy Committee Review Group.

(a) The Trade Executive Committee, established by regulations appearing by 36 FR 23620, December 11, 1971 (15 CFR 2002.1), is abolished and there is hereby established as a subordinate body of the Trade Policy Committee the Trade Policy Committee Review Group (hereinafter referred to as the "Review Group"). The Review Group consists of a Deputy Trade Representative, designated by the Trade Representative, as chairman, and of high level officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State and Treasury, and the Executive Director of the Council on International Economic Policy. The Special Representative or the Deputy Special Representative, as appropriate, and each head of an agency or office, may designate from his respective agency or office high level officials to serve as alternate members of the Review Group in the event the regular member is unable to attend any meeting of the Review Group.

(b) The Review Group performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Coordinates interagency activities concerning the trade agreements program and related matters;

(2) Recommends policies and actions, and transmits appropriate materials, to the Special Representative concerning the trade agreements program and related matters, or, when appropriate, approves such policies and actions; and

(3) As appropriate, reviews and approves recommendations of the Trade Policy Staff Committee on policies and actions concerning any proposed trade agreements, the trade agreements program, and related matters.

(4) [Reserved]

(5) Performs such other functions as the Special Representative or a Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct. 18, 1977]

§ 2002.2 Trade Policy Staff Committee.

(a) The Trade Staff Committee and the Trade Information Committee, established by regulations appearing at 36 FR 23620, December 11, 1971 (15 CFR 2002.2, and 2002.3, respectively) are abolished and there is hereby established as a subordinate body of the Trade Policy Committee and the Trade Policy Review Group the Trade Policy Staff Committee (hereinafter referred to as "the Committee"). The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy," so that the sentence reads: The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy, and by the Chairman of the International Trade Commission. Each Secretary or head of an agency or office and the Chairman of the Commission may designate from his respective agency officials to serve as alternate members of the Committee in the event the regular member is unable to attend any meeting of the Committee. The Special Representative may from time to time designate officials from his agency other than the chairman, to serve as acting chairmen of the Committee. The representative of the International Trade Commission shall be a nonvoting member of the Committee.

(b) The Committee performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Monitors the trade agreements programs, reviews the information received pursuant to paragraphs (b) (2) through (8) of this section, and transmits summaries of such information together with recommendations of action to the Special Representative, or through him to the Trade Policy Review Group or the Trade Policy Committee, concerning the trade agreements program and related matters, or when appropriate approves such policies and actions.

(2) Obtains information and advice from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the Office of the Special Representative for Trade Negotiations, and from such other sources as the Special Representative, a Deputy Special Representative, or the Chairman of the Commit-

tee may deem appropriate concerning any proposed trade agreement and other aspects of the trade agreements program and related matters, and concerning the Generalized System of Preferences in accordance with Title V of the Trade Act;

(3) Provides an opportunity, by the holding of public hearing and by such other means as the Special Representative, the Deputy Special Representative or the Chairman of the Committee deems appropriate, for interested persons to present their views concerning any article on a list published pursuant to section 131 of the Trade Act, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to a proposed trade agreement;

(4) Provides an opportunity, by the holding of public hearings and by such other means as the Special Representative, a Deputy Special Representative, or the Chairman of the Committee deems appropriate, for any interested party to present by oral or written statement his views concerning articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences;

(5) [Reserved]

(6) Provides an opportunity where deemed appropriate by the Special Representative, the Deputy Special Representative, or the Chairman, by the holding of public hearings upon request by an interested party, and by such other means as the Special Representative, the Deputy Special Representative or the Chairman deems appropriate, for any interested party to present an oral or written statement concerning any other aspect of the trade agreements program and related matters;

(7) Reviews all materials required to be furnished by the International Trade Commission to the President through the Special Representative, and transmits such materials, together, where appropriate with recommendations of action with respect thereto, to the Special Representative or a Deputy Special Representative.

(8) Reviews reports of hearings and reviews conducted by the section 301 Committee provided for in § 2002.3 and recommendations resulting therefrom, and makes recommendations to the Special Representative with respect thereto.

(9) When circumstances warrant, terminates section 301 reviews provided for in § 2002.3

(10) Receives and reviews requests pertaining to the duty-free treatment accorded to articles under the Generalized System of Preferences, and handles such requests and reviews in accordance with Part 2007 of these regulations;

(11) Issues regulations governing the conduct of its public hearings and the performance of such of its other functions as it deems necessary;

(12) Performs such other functions as the Special Representative or the Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct, 18, 1977]

§ 2002.3 Section 301 Committee.

(a) There is hereby established, as a subordinate body of the Trade Policy Staff Committee, the Section 301 Committee. The Chairman of the Section 301 Committee shall be designated by the Deputy Special Representative from the Office of the Special Representative for Trade Negotiations. The Committee shall consist of the Chairman and, with respect to each complaint, such members as may be designated by agencies which have an interest in the issues raised by the particular complaint and whose participation is invited by the Chairman of the Committee.

(b) The Section 301 Committee performs the following functions unless such functions are assigned to a different body by the Special Representative, or his designee:

(1) Reviews complaints received pursuant to section 301 of the Trade Act of 1974.

(2) Provides an opportunity by the holding of public hearings upon request by a complainant or an interested party, as appropriate, and by such other means as the Special Representative, a Deputy Special Representative or the Chairman of the section 301

Committee deems appropriate, for any interested party to present his views to the section 301 Committee concerning foreign restrictions, acts, policies, and practices affecting U.S. commerce, and United States actions in response thereto, as provided for in section 301 of the Trade Act (Pub. L. 93-618, 88 Stat. 1978).

(3) Reports to the Trade Policy Staff Committee the results of reviews and hearings conducted with respect to complaints received pursuant to section 301 of the Trade Act.

(4) On the basis of its review of petitions filed under section 301 and of the views received through hearings or otherwise on such petitions, makes recommendations to the TPSC for review by that committee.

[40 FR 39497, Aug. 28, 1975, as amended at 42 FR 55611, Oct 18, 1977]

§ 2002.4 Participation by other agencies.

The chairman of the Trade Policy Committee, the Trade Policy Committee Review Group, the Section 301 Committee, and the Trade Policy Staff Committee may invite the participation in the activities of their committees of any other agencies when matters of interest to such agencies are under consideration.

[40 FR 18420, Apr. 28, 1975. Redesignated and amended at 40 FR 39497, Aug. 28, 1975]

PART 2003—REGULATIONS OF TRADE POLICY STAFF COMMITTEE

Sec.
2003.0 Office, mailing address, telephone number, and hours.
2003.1 Notice of public hearings.
2003.2 Testimony and submission of written briefs.
2003.3 [Reserved]
2003.4 Presentation of oral testimony at public hearings.
2003.5 Information open to public inspection.
2003.6 Information exempt from public inspection.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

SOURCE: 40 FR 18421, Apr. 28, 1975, unless otherwise noted.

§ 2003.0 Office, mailing address, telephone number, and hours.

(a) The office of the Committee is at Room 729, 1800 G Street NW., Washington, DC 20506.

(b) All communications to the Committee should be addressed to the "Secretary, Trade Policy Staff Committee, Office of the Special Representative for Trade Negotiations, Room 729, 1800 G Street, NW., Washington, DC 20506."

(c) The telephone number of the office of the Committee is (202) 395-3395.

(d) The regular hours of the office of the Committee are from 9 a.m. to 5:30 p.m. on each business day, Monday through Friday.

§ 2003.1 Notice of public hearings.

The Committee shall publish in the FEDERAL REGISTER a notice of a proposed public hearing, the subject matter of the proposed public hearing, the period during which written briefs may be submitted, the period during which requests may be submitted to present oral testimony, and the time and place of the proposed public hearing, in the following instances:

(a) Upon publication of lists of articles by the President under section 131(a), or sections 503(a) and 131(a), of the Trade Act as a result of which public hearings are required to be held by section 133 of the Trade Act with respect to any matter relevant to a proposed trade agreement, or with respect to any matter relevant to the granting of generalized tariff preferences for the listed articles;

(b) Whenever the Special Representative or the Deputy Special Representative determines that public hearings in connection with the review of a request submitted pursuant to Part 2007 of these regulations, pertaining to the duty-free treatment accorded to articles under the GSP, are in the public interest.

(c) Upon instructions of the Special Representative.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975]

§ 2003.2 Testimony and submission of written briefs.

(a) Participation by an interested party in a public hearing announced under § 2003.1 shall require the submission of a written brief before the close of the period announced, in the public notice for its submission. Such brief may be, but need not be, supplemented by the presentation of oral testimony in accordance with § 2003.4.

(b) A written brief by an interested party concerning any aspect of the trade agreements program or any related matter not subject to paragraph (a) of this section, and submitted pursuant to a public notice shall be submitted before the close of the period announced in the public notice for its submission.

(c) A written brief shall state clearly the position taken and shall describe with particularity the evidence supporting such position. It shall be submitted in not less than twenty (20) copies which shall be legibly typed, printed, or duplicated.

(d) In order to assure each party an opportunity to contest the information provided by other interested parties, the Committee will entertain rebuttal briefs filed by any party within a time limit specified by the Committee. Rebuttal briefs shall conform, in form and number, to the provisions of paragraph (c) of this section. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearings and should be as concise as possible.

(e) A written brief by an interested party concerning any aspect of the Trade Agreements Program or any related matter not subject to paragraph (a) or (b) of this section may be submitted at any time.

(f) The requirements in paragraphs (a) through (d) of this section may be waived by the Special Representative, the Deputy Special Representative, or the Chairman of the Committee for reasons of equity and the public interest.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

§ 2003.3 [Reserved]

§ 2003.4 Presentation of oral testimony at public hearings.

(a) A request by an interested party to present oral testimony at a public hearing shall be submitted in writing before the close of the period announced in the public notice for its submission, and shall state briefly the interest of the applicant and the position to be taken by the applicant. Such request will be granted only if a written brief has been prepared and submitted in accordance with § 2003.2. The requirements of this subpart may be waived by the Special Representative, the Deputy Special Representative or the Chairman of the Committee for reasons of equity and the public interest.

(b) After receipt and consideration of a request to present oral testimony at a public hearing, the Secretary of the Committee shall notify the applicant whether the request conforms to the requirements of paragraph (a) of this section, and if so, the time and place for the hearing and for his appearance, and the amount of time allotted for his oral testimony, and if not, will give the reasons why the request does not conform to the requirements.

(c) In presenting testimony, the interested party should supplement the information contained in the written brief, and should be prepared to answer questions relating to such information.

(d) A stenographic record shall be made of every public hearing.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

§ 2003.5 Information open to public inspection.

(a) With the exception of information subject to § 2003.6, an interested party may, upon request, inspect at the office of the Committee:

(1) Any written request, brief, or similar submission of information;

(2) Any stenographic record of a public hearing;

(3) Other public written information concerning the trade agreements program and related matters.

§ 2003.6 Information exempt from public inspection.

(a) The Committee shall exempt from public inspection business information submitted by an interested party if the Committee determines that such information concerns or relates to trade secrets and commercial and financial information the disclosure of which is not authorized by the interested party furnishing such information and is not required by law.

(b) A party requesting that the Committee exempt from public inspection business information submitted in writing shall clearly mark each page "BUSINESS CONFIDENTIAL" at the top.

(c) The Committee may deny a request that it exempt from public inspection any particular business information if it determines that such information is not entitled to exemption under paragraph (a) of this section. In the event of such denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw his submission.

PART 2004—FREEDOM OF INFORMATION POLICIES AND PROCEDURES

Sec.

2004.1 General.
2004.2 Availability of records.
2004.3 [Reserved]
2004.4 Records which may be exempt from disclosure.
2004.5 Classified records and information from other agencies.
2004.6 Release or denial of request for records.
2004.7 Appeals.
2004.8 Time limits.
2004.9 Fees schedule.
2004.10 Fee payments.
2004.11 Current index.
2004.12 Annual report to Congress.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978, (5 U.S.C. 552), as amended by Pub. L. 93-502; (19 U.S.C. 2171).

SOURCE: 40 FR 30934, July 24, 1975, unless otherwise noted.

§ 2004.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of Title 5, U.S.C. as amended.

§ 2004.2 Availability of records.

(a) All identifiable records of the Office of the Special Representative shall be made available to the public upon compliance with the procedures established in this part, except to the extent that a determination is made to withhold a record subject to exemption under 5 U.S.C. 552(b).

(b) All requests for records must be in writing and shall be addressed to Freedom of Information Officer, Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, DC 20506. Requests should reasonably identify the particular record or records sought. Such a description, if possible, should include date, format, subject matter, office originating or receiving the record, and the name of any person to whom the record is known to relate.

§ 2004.3 [Reserved]

§ 2004.4 Records which may be exempt from disclosure.

(a) The following categories of records maintained by the Office of the STR may be exempted from disclosure:

(1) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order.

(2) Records related solely to the internal personnel rules and practices of the agency.

(3) Records specifically exempted from disclosure by statute, including but not limited to information relating to trade negotiations exempted under trade negotiations exempted under Pub. L. 93-618, section 135(g)(1) (A) and B and section 135(g)(2).

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Records which are inter-agency or intra-agency memorandums, letters, telegrams, or airgrams which would not be available by law to a party other than an agency in litigation with the agency.

(6) Records such as personnel and medical files and similar files the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Such other records that fall within exceptions noted in 5 U.S.C. 552(b) (7), (8) and (9).

(b) Any reasonably segregable nonexempt portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under paragraph (a) of this section. Normally a portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context and does not contradict the record being withheld.

§ 2004.5 Classified records and information from other agencies.

(a) A Classification Review Committee is hereby established within STR to make determinations on the applicability of the exemption for classified documents. The Committee will be chaired by a staff official designated by the Special Representative and will consist of the Chairman and 2 STR Officials designated by him who have authority to classify and declassify documents.

(b) The applicability of the exemption for classified information requires a determination that the record in question is specifically authorized under the criteria established by Executive Order 11652 to be kept classified and is in fact properly classified pursuant to that order. This determination shall be made whenever possible before the initial denial under § 204.4(a)(1). It must in any case be made prior to the decision of an appeal under § 2004.7. No denial should be based solely on the existence of a classification marking on the record, and there shall be a substantive review of the validity of the classification to the maximum extent feasible within the time limits for a denial under § 2004.4.

(c) When a request for a STR record encompasses classified information originated or received from another department or agency, the request for that information shall be referred to the originator or other source. The person requesting the record will be advised of the date and the addressee of the referral.

(d) The Classification Review Committee will, at the request of another agency, make recommenaations on the release of material concerning "national defense or foreign policy" originally classified by another agency but which is of significant subject-matter interest to STR.

§ 2004.6 Release or denial of request for records.

Written requests for inspection or copying of records shall be granted or denied only by the Freedom of Information Officer or his designee. Responses to written requests shall be in writing, shall specify the reasons for any denial therefore, and shall advise the person requesting of the right to appeal any denial to the Freedom of Information Appeals Committee.

§ 2004.7 Appeals.

(a) A Freedom of Information Appeals Committee is hereby established, consisting of the Special Representative or his designee as chairman, and 3 STR staff officials designated by the Special Representative, none of whom were members of the Classification Committee which originally made the determination on the requested information.

(b) Review of an initial denial under § 2004.6 may be requested by the person who submitted the original request for a record. The review (hereinafter the appeal) must be requested in writing within 30 days of the date that the person requesting the record is informed either:

(1) That the request is denied completely, or

(2) That all records which are being furnished in response to his request have been released and he has been so informed.

(c) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releaseable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in § 2004.9. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decision and of the provisions of judicial review of STR's denial of the request.

(d) In the event a determination is not issued within the appropriate time limit and the person making the request chooses to initiate a court action against STR, the determination process shall continue and the Freedom of Information Appeals Committee may review any initial denial of the requested record.

§ 2004.8 Time limits.

(a) An initial response under § 2004.6 shall be made within 10 days (exempting Saturdays, Sundays, and legal public holidays) after the receipt of a request for a record under this Part by the Freedom of Information Officer or his designee. An appeal under § 2004.7 shall be decided within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such an appeal by the Appeals Committee.

(b) The time limits for initial decision and for an appeal decision begins on the date the request or appeal is actually received by STR. If requests or appeals not properly marked "Freedom of Information Request" or "Freedom of Information Act Appeal" on the request or appeal are inadvertently delayed in reaching the Freedom of Information Officer or the Appeals Committee they will not be deemed received by STR until actually received by the Freedom of Information Officer or Appeals Committee. In such event, the person making the request or appeal will be furnished a notice of the effective date of receipt.

(c) In unusual circumstances as specified in this paragraph, the Freedom of Information Officer or his designee may extend the time limits in paragraph (a) of this section by written notice to the person requesting a record under this part, which notice shall set forth the reasons for such extension and the date on which a determination or appeal decision is expected to be dispatched. No such notice shall specify a date which would result in an extension of either the initial determination period, or the appeal period, or both, for more than 10 working days. As used in this paragraph "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from overseas posts or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultations, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest therein.

(d) Where the responsible official believes that further consideration of a request may result in the release of additional records or portions thereof, the expiration of the time period allocated by the Freedom of Information Officer or his designee does not require the termination of that consideration, and it should be continued with a view to maximum disclosure of requested records within a reasonable period of time.

§ 2004.9 Fees schedule.

(a) Fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended:

(1) *Search for records.* Five dollars per hour when the search is conducted by a clerical employee. Eight dollars per hour when the search is conducted by a professional employee. No charge for searches of less than one hour.

(2) *Duplication of records.* Records will be duplicated at a rate of $.15 per page for all copying of 4 pages or more.

(3) *Other.* When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Freedom of Information Act Officer is

authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Freedom of Information Officer or his designee or the Freedom of Information Appeals Committee determines that a record which has been requested, but which is exempt from disclosure under the Act, is to be withheld. Processing of a request for records will not be undertaken until the person requesting a record has paid in full for search and duplication charges for any previous document request under the Act.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the person requesting the record has not indicated in advance his willingness to pay fees as high as are anticipated, the person so requesting shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting the record to consult with the Administrative Officer of STR in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the person requesting the record. Dispatch of such a notice or request shall suspend the running of the period for response by the Office of the STR until a reply is received from the person requesting the record.

(d) Fees must be paid in full prior to issuance of requested copies.

§ 2004.10 Fee payments.

(a) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasurer of the United States and mailed to "the Administrative Officer", STR, 1800 G St. NW., Washington, DC 20506.

(b) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(c) The STR Administrative Officer, may in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section which it is deemed to be in either the interest of STR or in the public interest.

§ 2004.11 Current index.

The Office of the STR maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is retained as a record and is required by § 2004.2 to be made available or published. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 2004.12 Annual report to Congress.

(a) On or before March 1st of each calendar year, a report of STR's activities over the preceding calendar year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

(b) The above report will include:

(1) The number of determinations made by STR not to comply with requests for records made to it under the Act and the reasons for each such determination;

(2) The number of appeals made by persons under the Act, the results of such appeals, and the reasons for the action by STR upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each;

(4) The results of each (Civil Service Commission) proceeding conducted pursuant to the Act, including a report of the disciplinary action taken

against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by STR regarding the Act;

(6) A copy of the fee schedule and the total amount of fees collected by STR for making records available under the Act; and

(7) Such other information as indicates efforts by STR to administer fully the Act. (This should include, to the extent possible, data on the costs to STR of administering the Act.)

(c) STR, based in part on the information compiled for its annual report to Congress, will provide upon request assistance to the Department of Justice in the preparation of its annual report (also due each March 1st) to Congress concerning judicial cases arising under the provisions of the Act.

PART 2005—SAFEGUARDING INDIVIDUAL PRIVACY

Sec.
2005.0 Purpose and scope.
2005.1 Rules for determining if an individual is the subject of a record.
2005.2 Requests for access.
2005.3 Access to the accounting of disclosures from records.
2005.4 Requests for copies of records.
2005.5 Requests to amend records.
2005.6 Request for review.
2005.7 Schedule of fees.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 48331, Oct. 14, 1975, unless otherwise noted.

§ 2005.0 Purpose and scope.

The purpose of these regulations is to provide certain safeguards for an individual against the invasion of his or her personal privacy by the Office of the Special Representative for Trade Negotiations (hereinafter frequently referred to as "STR"). These regulations are promulgated pursuant to the requirements for all Federal Agencies contained in 5 U.S.C. 552a(f).

§ 2005.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by STR contains a record pertaining to them should address their inquiries to the Administrative Officer, Office of the Special Representative for Trade Negotiations, Washington, DC 20506. The written inquiry should contain a specific reference to the system of records maintained by the STR listed in the STR Notice of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of STR systems of records subject to the Privacy Act will be published in the FEDERAL REGISTER and copies of the notices will be available upon request to the Administrative Officer when so published. A compilation of such notices will also be made and published by the Office of Federal Register, in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient identifying information to allow STR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, STR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Administrative Officer will inform the person making the request the reasons for the delay and the date of which a response may be anticipated.

§ 2005.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by STR must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section. Individuals who are employed by the STR may make their request on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9 am and 5:30 pm. Such requests for access by individuals employed by STR need not be made in writing.

(b) *Procedures*—(1) *Content of the request.* The request for access to a record in a system of records shall be addressed to the Administrative Officer at the address cited above, and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by STR in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g. maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the STR Notice of Systems of Records.

(i) If the request for access follows a prior request under § 2005.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the STR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under § 2005.4.

(2) *STR action on request.* A request for access will ordinarily be answered within 10 days, except when the Administrative Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as request or a statement that there is not a record in the systems of records maintained by STR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the official specified in paragraph (b)(1) of this section.

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Administrative Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§ 2005.6 and 2005.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the STR official having operational control over the record; and

(vi) The documentation required by STR to verify the identity of the person making the request. At a minimum, STR verification standards include the following:

(A) *Current or former STR Employees.* Current or former STR employees requesting access to a record pertaining to them in a system of records maintained by STR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former STR employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former STR employees.* Individuals other than current or former STR employees requesting access to a record pertaining to them in a system of records maintained by STR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Administrative Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the person making the request of information required to be made available to the public by 5 U.S.C. 552. When, in the opinion of the Administrative Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by STR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by STR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by STR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Administrative officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Administrative Officer shall direct. When STR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, STR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceedings.

§ 2005.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 2005.2.

§ 2005.4 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 2005.2. (See also § 2005.7 for rules regarding fees.)

§ 2005.5 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by STR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of STR.

(b) *Procedures.* (1) (i) The request to amend a record in a system of records shall be addressed to the Administrative Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the individual and STR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 2005.2(b)(2)(vi) herein, further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, STR may require identification validation as described in § 2005.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Administrative Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit STR not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by STR of personal information merely to permit verification of records, the burden of persuading STR to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *STR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. In the event a decision cannot be made within this time frame, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the STR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within STR (see § 2005.6).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2005.6 Request for review.

(a) Individuals wishing to request a review of the decision by STR with regard to an initial request to amend a record in accordance with the provisions of § 2005.5, should submit the request for review in writing and, to the extent possible, include the information specified in § 2005.5(a). Individuals desiring assistance in the preparation of their request for review should contact the Administrative Officer at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from STR in which the request to amend was denied and also the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 2005.5, set forth by STR in its decision denying the amendment. Appeals filed without a complete statement by the person making the request setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, such person's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, STR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by STR within 180 days of the mailing by STR of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Administrative Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Freedom of Information Appeals Committee (established in 15 CFR 2004.7) Office of the Special Representative for Trade Negotiations, Room 719, 1800 G St. NW., Washington, DC 20506.

(d) Final determinations on requests for reviews within STR will be made by the Freedom of Information Appeals Committee, chaired by the Special Representative for Trade Negotiations. Additional information may be requested by the Committee from the person requesting a review if necessary to make a determination.

(e) The FOI Appeals Committee will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by STR of the individual's request for review, unless the Committee extends the 30 day period for good cause. The extension and the reasons therefor will be sent by STR to the individual within the initial 30 day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with STR setting forth the individual's reasons for his disagreement with the decision upon the request for review. The STR Administrative Officer has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if STR chooses to file such a statement. A copy of the individual's statement, and if it chooses, STR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§ 2005.7 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Administrative Officer may, at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records. Records will be duplicated at a rate of $.10 per page for all copying of 4 pages or more. There is no charge for duplicating 3 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, the person making the request shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Administrative Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Administrative Officer, Office of the Special Representative for Trade Negotiations, 1800 G St., NW., Washington, DC, 20506.

(5) A receipt for fees paid will be given upon request.

PART 2006—PROCEDURES FOR COMPLAINTS FILED UNDER SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED

Sec.
2006.0 Submission of petition requesting Presidential action under section 301.
2006.1 Information to be included in petition.
2006.2 Adequacy of the petition.
2006.3 Determinations regarding petitions.
2006.4 Requests for information made to foreign governments and instrumentalities.
2006.5 Procedures upon initiation of investigation: Consultations and formal dispute settlement.
2006.6 Termination or suspension of review.
2006.7 Public hearings.
2006.8 Submission of written briefs.
2006.9 Presentation of oral testimony at public hearings.
2006.10 Waiver of requirements.
2006.11 Consultations before making recommendations.
2006.12 Recommendations: Time limits.
2006.13 Information open to public inspection.
2006.14 Information not available.
2006.15 Information exempt from public inspection.

AUTHORITY: Sec. 306, Trade Act of 1974, as amended by sec. 901, Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 299 (19 U.S.C. 2416).

SOURCE: 45 FR 34871, May 23, 1980, unless otherwise noted.

§ 2006.0 Submission of petition requesting Presidential action under section 301.

(a) Section 301 of the Trade Act of 1974, as amended authorizes the President to provide remedies for acts, policies or practices of foreign governments which are inconsistent with international trade agreements, or otherwise unreasonable, unjustifiable, or discriminatory and burden or restrict U.S. commerce, or against failure of a foreign government to grant United States rights under a trade agreement. Petitions filed under section 301 will be treated as specified in these regulations.

(b) Petitions may be submitted by an interested party. An interested party is deemed to be a party who has a significant interest; for example, a producer or a commercial importer or exporter of a product which is affected either by the failure to grant rights to the United States under a trade agreement or by the act, policy or practice complained of; a trade association, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product so affected; or any person representing a significant economic interest affected either by the failure of a foreign government to grant United States rights under a trade agreement or by the act, policy or practice complained of in the petition.

(c) The petition shall be submitted in twenty copies, clearly typed, photocopied or printed to:

Chairman, Section 301 Committee, Office of the United States Trade Representative, 1800 G Street, NW., Washington, DC 20506

(d) The telephone number of the Section 301 Committee is (202) 395-3432.

§ 2006.1 Information to be included in petition.

Petitions submitted pursuant to section 301 of the Trade Act of 1974 shall clearly state on the first page that the petition is filed under section 301 of the Trade Act of 1974 and shall contain information reasonably available to the petitioner in substantially the form specified below. Petitioners for whom such information is difficult or impossible to obtain shall provide as much information as possible and assistance in filing their petition may be obtained through the Chairman of the Section 301 Committee. Petitions shall:

(a) Identify the petitioner and the person, firm or association, if any, which petitioner represents and describe briefly the interest of the petitioner which is affected by the failure of a foreign government or instrumentality to grant rights of the United States under a trade agreement or which is otherwise affected by the act, policy or practice which is the subject of the petition.

(b) Describe the rights of the United States being denied under the trade agreement which petitioner seeks to enforce or the act, policy or practice which is the subject of the petition and provide a reference to the particular part of section 301 related to the assertion in the petition.

(c) Include, wherever possible, copies of laws or regulations which are the subject of the petition. If this is not possible, the laws and regulations shall be identified with the greatest possible particularity, such as by citation.

(d) Identify the foreign country or instrumentality with whom the United States has an agreement under which petitioner is asserting rights claimed to be denied or whose acts, policies or practices are the subject of the petition.

(e) Identify the product or service for which the rights of the United States under the agreement, claimed to be denied, are sought or which is subject to the act, policy or practice of the foreign government or instrumentality named in paragraph (d) of this section.

(f) Demonstrate that rights of the United States under a trade agreement are not being provided or show the manner in which the act, policy or practice is inconsistent with the provisions of a trade agreement or otherwise denies benefits due the United States under a trade agreement or is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States' commerce. Provide specific information showing the volume of trade involved and the impact on petitioner and on U.S. commerce. If the petition includes an assertion that subsidy payments are having an adverse effect upon a product or products of the United States in United States' markets or in other foreign markets, it shall include, to the extent possible, the following information:

(1) The volume of trade in the goods or services involved.

(2) A quantification of the economic or other impact on the petitioner and on U.S. commerce in general.

(3) A statement of the manner in which the subsidy complained of is inconsistent with any trade agreement and the manner in which it burdens or restricts United States' commerce.

(g) State whether petitioner has filed or is filing for other forms of relief under the Trade Act of 1974 or any *other* provision of law.

§ 2006.2 Adequacy of the petition.

If the petition filed pursuant to § 2006.0 does not conform substantially to the requirements of §§ 2006.0 and 2006.1, the Chairman of the Section 301 Committee may nevertheless determine that there is sufficient information on which to proceed to a determination whether to initiate an investigation, or at the request of the petitioner, may return the petition with guidance on making the petition conform to the requirements.

§ 2006.3 Determinations regarding petitions.

Within 45 days after the day on which the petition is received, the U.S. Trade Representative shall determine, after receiving the advice of the 301 Committee, whether to initiate an investigation.

(a) If the U.S. Trade Representative determines not to initiate an investigation, he shall notify the petitioner of his reasons and shall publish notice of the negative determination and a summary of the reasons therefor in the FEDERAL REGISTER.

(b) If the U.S. Trade Representative determines to initiate an investigation, he shall publish the text of the petition in the FEDERAL REGISTER, and provide an opportunity for the presentation of views concerning the issues.

§ 2006.4 Requests for information made to foreign governments or instrumentalities.

If the U.S. Trade Representative receives a petition alleging violations of any international agreement, he will notify the foreign government or instrumentality of the allegations and may request information, in English, necessary to a determination of the case. The U.S. Trade Representative may proceed on the basis of best information available if, within a reasonable time, no information is received in response to the request.

§ 2006.5 Procedures upon initiation of investigation: Consultations and formal dispute settlement.

(a) If the U.S. Trade Representative determines to initiate an investigation on the basis of a petition, he shall, on behalf of the United States, request consultations with the foreign government or instrumentality concerned regarding the issues raised in the petition.

(b) If the issues in a petition are covered by a trade agreement between the United States and the foreign government involved and a mutually acceptable resolution cannot be reached within the consultation period provided for in the agreement, the U.S. Trade Representative shall institute the formal dispute settlement proceedings, if any, provided for in the agreement. In preparing United States presentations for consultations and dispute settlement proceedings, the U.S. Trade Representative shall seek information and advice from the petitioner and from the appropriate private sector representatives.

§ 2006.6 Termination or suspension of review.

(a) The review of a complaint received under section 301 may be terminated or suspended by the U.S. Trade Representative after receiving the advice of the Section 301 Committee.

(b) Termination or suspension of a section 301 review shall be given effect by notification to the complainant and by publication in the FEDERAL REGISTER of a notice and a statement of the reasons for such termination or suspension.

§ 2006.7 Public hearings.

(a) A public hearing shall be held if requested by the petitioner in writing under section 302(b)(2):

(1) Within 30 days after the date of an affirmative determination under § 2006.3(b) if the request for public

hearing within such period is included with the petition; or

(2) On a date after that period if agreed to by the petitioner; or

(3) At such other time as agreed to by the petitioner if a timely request for a public hearing is made by the petitioner following the filing of the petition.

(b) A public hearing shall be held by the U.S. Trade Representative if requested under section 304(b)(1) by any interested person submitting an application in writing stating briefly the interest of the person requesting the hearing, the firm, person or association he represents and the position to be taken. A hearing so requested shall be held:

(1) Prior to a recommendation that the President take action; or

(2) Within 15 days after the recommendation to the President for action is made, if the U.S. Trade Representative determines that expeditious action is required.

(c) After receipt of a request for a public hearing under section 304(b)(1) of the Trade Act, the Chairman of the Section 301 Committee will notify the applicant whether his request meets the requirements of this part, and if not, the reasons therefor. If the applicant has met the requirements of this part, he will be notified of the time and place of the public hearing.

(d) Notice of public hearings to be held under sections 302(b)(2) and 304(b)(1) shall be published in the FEDERAL REGISTER by the Chairman of the Section 301 Committee.

§ 2006.8 Submission of written briefs.

(a) In order to participate in the presentation of views either at a public hearing or otherwise, an interested person must submit a written brief before the close of the period of submission announced in the public notice. The brief may be, but need not be, supplemented by the presentation of oral testimony in any public hearing scheduled in accordance with § 2006.6.

(b) The brief shall state clearly the position taken and shall describe with particularity the supporting rationale. It shall be submitted in twenty (20) copies which shall be legibly typed, printed or duplicated.

(c) In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any party within a time limit specified in the public notice. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

§ 2006.9 Presentation of oral testimony at public hearings.

(a) A request by an interested person to present oral testimony at a public hearing shall be submitted in writing before the close of the period of submission announced in the public notice and shall state briefly the interest of the applicant. Such request will be granted if a brief has been submitted in accordance with § 2006.7.

(b) After consideration of a request to present oral testimony at a public hearing, the Chairman of the Section 301 Committee will notify the applicant whether the request conforms to the requirements of § 2006.8(a), and, if it does not, will give the reasons. If the applicant has submitted a conforming request he shall be notified of the time and place for the hearing and for his oral testimony.

§ 2006.10 Waiver of requirements.

To the extent consistent with the requirements of the Trade Act of 1974, as amended, the requirements of §§ 2006.0 through 2006.3 and §§ 2006.6 through 2006.8 may be waived by the U.S. Trade Representative or the Chairman of the Section 301 Committee upon a showing of good cause and for reasons of equity and the public interest.

§ 2006.11 Consultations before making recommendations.

Prior to making recommendations on what action, if any, should be taken in regard to issues raised in the petition, the U.S. Trade Representative shall obtain advice from the appropriate private sector advisory representatives unless expeditious action is required, in which case he shall seek such advice after making the recommendation. The U.S. Trade Representative may also request the views of the International Trade Commission on the probable economic impact of the proposed action.

§ 2006.12 Recommendations: Time limits.

The U.S. Trade Representative, after receiving the advice of the 301 Committee through the TPC or an appropriate subgroup, shall recommend to the President what action, if any, should be taken under Section 301 with respect to the issues raised in the petition not later than:

(a) Seven months after the date of the initiation of the investigation if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Applications of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade;

(b) Eight months after the date of the initiation of the investigation if any matter covered by the Subsidies Agreement other than only an export subsidy is alleged in the petition;

(c) Thirty days after the conclusion of the dispute settlement procedure where the petition raises issues covered by a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement);

(d) 12 months after the date of investigation initiation in cases not included under paragraphs (a), (b), or (c) of this section.

§ 2006.12 Information open to public inspection.

(a) With the exception of information subject to § 2006.14, an interested person may, upon written request, inspect at the office of the Chairman of the Section 301 Committee:

(1) Any written petition, brief, or similar submission of information made pursuant to section 301.

(2) Any stenographic record of a public hearing held pursuant to section 301.

(3) Information on the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular products or services, to the extent that such information is available to the U.S. Trade Representative or other Federal agencies.

(4) Information on the rights of the United States under any trade agreement and the remedies which may be available under the agreement and under the laws of the United States.

(b) Fees will be charged for duplication of documents requested in accordance with the fee schedule and payments provisions of 15 CFR 2004.9 and 2004.10.

§ 2006.14 Information not available.

If the U.S. Trade Representative does not have, and cannot obtain from other federal agencies, information requested in writing, by any person, he shall, within 30 days after the receipt of the request:

(a) Request the information from the foreign government involved; or

(b) Decline to request the information and inform the person in writing of the reasons for the refusal.

§ 2006.15 Information exempt from public inspection.

(a) The Chairman of the Section 301 Committee shall exempt from public inspection business information submitted in confidence if he determines that such information involves trade secrets or commercial and financial information the disclosure of which is not authorized by the person furnishing such information nor required by law.

(b) A party requesting that the Chairman exempt from public inspection business information submitted in writing shall clearly mark each page "Business Confidential" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide the Chairman of the Section 301 Committee with a written explanation of the reasons the material should be so classified.

(c) The Chairman may deny a request that he exempt from public inspection any particular business information if he determines that such information is not entitled to exemption under law. In the event of a denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw the submission.

PART 2007—REGULATIONS OF THE U.S. TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM (GSP) IMPLEMENTING Title V OF THE TRADE ACT OF 1974, AS AMENDED.

Sec.
2007.0 Requests for reviews.
2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.
2007.2 Action following receipt of requests for modifications in the list of eligible articles.
2007.3 Timetable for reviews.
2007.4 Publication regarding requests.
2007.5 Written briefs and oral testimony.
2007.6 Information open to public inspection.
2007.7 Information exempt from public inspection.
2007.8 Other reviews of article eligibilities.

AUTHORITY: 19 U.S.C. 2461-65, 88 Stat. 2066-2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 3018-3024; Executive Order No. 11846 of March 27, 1975 (40 FR 14291); Executive Order No. 12188 of January 2, 1980 (45 FR 989).

SOURCE: 50 FR 19672, May 10, 1985, unless otherwise noted.

§ 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review, within the three preceding calendar years; or (2) that that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S.C. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) At any time during the calendar year, including the annual product reviews conducted pursuant to the schedule set out in § 2007.3, any person may file a request to have the status of any eligible beneficiary developing country reviewed with respect to any of the mandatory designation criteria listed in section 502(b) (19 U.S.C. 2462(b)). Such requests must: (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) criteria which the requester believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; and (5) supply any other relevant information as requested by the GSP Subcommittee.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2010.0 et seq., an interested party is defined as a party who has a significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in the English language in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Washington, D.C. 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of § 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in § 2007.0(a).

§ 2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

(a) *General information required.* A request submitted pursuant to this Part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c) of this section. Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States;

(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Request to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm or firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in sections 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461, 2462(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of a request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and to the extent possible other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase if CSP status is granted);

(4) Actual production capacity and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as, considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, Petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Profitability of firms producing the product;

(10) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(11) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(12) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(13) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles.

(a) If the request does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review may be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the FEDERAL REGISTER those requests which will be considered for full examination in the product review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the United States International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting reviews, the TPSC may hold public hearings.

(e) As appropriate, the USTR on behalf of the President will request advice from USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representatives who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend (1) that additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) that product coverage be otherwise modified, the GSP Subcommittee on behalf of the TPSC, the TPRG or the TPC shall review the relevant information submitted in connection with or concerning a request under this part, together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

§ 2007.3 Timetable for reviews.

(a) *Regular product review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule unless otherwise specified by FEDERAL REGISTER notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, FEDERAL REGISTER announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results will be announced by April and will be implemented on July 1, the statutory effective date of modifications to the program. If the effective date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests which indicate the existence of unusual circumstances warranting an immediate review may be reviewed separately. Requests for such urgent consideration should contain a justification for the urgency.

(c) *General product review.* Section 504(c)(2) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2464(c)(2)) requires that, no later than January 4, 1987, and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in section 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the FEDERAL REGISTER. The first general product review was initiated on February 14, 1985 and will be completed by January 3, 1987. The initiation of the review and deadlines for submission of comments and statements were announced in the FEDERAL REGISTER on February 14, 1985 (50 FR 6294).

§ 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to § 2007.2 a statement of the fact that the request has been received, the TSUS item number or numbers and description of the article or articles covered by the request, and an invitation for all interested parties to submit views to the TPSC shall be published in the FEDERAL REGISTER.

(b) Upon the completion of a review, and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the FEDERAL REGISTER including:

(1) A list of requests upon which action has been taken; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP, the party submitting a request with respect to such articles may request explanation of factors considered.

§ 2007.5 Written briefs and oral testimony.

Section 2003.2 and 2003.4 of this part shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this Part.

§ 2007.6 Information open to public inspection.

With the exception of information subject to § 2007.7, an interested person may, upon request inspect at the office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

§ 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General product reviews.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S. imports of the article; or $25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. GNP, using 1984 as the base year). Other articles, except those subject to wavier pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)), will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of general reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)).

(2) *Factors to be considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(1) The effect such action will have on furthering the economic develop-

ment of developing countries through expansion of their exports;

(2) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports or products of such countries;

(3) The anticipated impact of such action on the United States producers of like or directly competitive products;

(4) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(5) The level of economic development of such country, including its per capita gross national product, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(6) Whether or not the other major developed countries are extending generalized perferential tariff treatment to such country;

(7) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(8) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(9) The extent to which such country has taken action to—

(i) Reduce trade distorting investment practices and policies (including export performance requirements); and

(ii) Reduce or eliminate barriers to trade in services; and

(10) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

EDITORIAL NOTE: Section 2007.8 was added at 50 FR 19674, May 10, 1985, and will be correctly codified by the Office of the United States Trade Representative in a document revising Part 2007 to be published in the FEDERAL REGISTER at a later date.

PART 2008—REGULATIONS TO IMPLEMENT E.O. 12065; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Subpart A—General Provisions

Sec.

2008.1 References.
2008.2 Purpose.
2008.3 Applicability.

Subpart B—Classification

2008.4 Basic policy.
2008.5 Level of original classification.
2008.6 Duration of original classification.
2008.7 Challenges to classification.

Subpart C—Derivative Classification

2008.8 Definition and application.
2008.9 Classification guides.

Subpart D—Declassification and Downgrading

2008.10 Declassification authority.
2008.11 Mandatory review for declassification.
2008.12 Foreign government information.
2008.13 Systematic review guidelines.

Subpart E—Safeguards

2008.14 Storage.
2008.15 General restrictions on access.
2008.16 Security education program.
2008.17 Historical researchers and former Presidential appointees.

Subpart F—Implementation and Review

2008.18 Information Security Oversight Committee.
2008.19 Classification Review Committee.

AUTHORITY: E.O. 12065.

SOURCE: 44 FR 55329, Sept. 26, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 2008.1 References.

(a) Executive Order 12065, "National Security Information," dated June 28, 1978.

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978.

§ 2008.2 Purpose.

The purpose of this regulation is to ensure, consistent with the authorities listed in section 1-1 of Executive Order 12065, that national security information originated or held by the Office of the Special Representative for Trade Negotiations is protected but only to the extent, and for the period, necessary to safeguard the national security.

§ 2008.3 Applicability.

This regulation governs the Office of the Special Representative for Trade Negotiations. In consonance with the authorities listed in section 1-1, it establishes the general policy and certain procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the Office of the Special Representative for Trade Negotiations.

Subpart B—Classification

§ 2008.4 Basic policy.

It is the policy of the Office of the Special Representative for Trade Negotiations to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

§ 2008.5 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2008.6 Duration of original classification.

(a) Except as permitted below, in paragraphs (b) and (c) of this section, information or material which is classified after December 1, 1978, shall be marked at the declassification no more than six years following its original classification.

(b) Original classification may be extended beyond six years only by officials with Top Secret classification authority and agency heads listed in section 1-2 of the order. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(1) The information is "foreign government information" as defined by the authorities in section 1.1;

(2) The information reveals intelligence sources and methods;

(3) The information pertains to communications security;

(4) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(5) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(6) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;

(7) The continued protection of the information is specifically required by statute.

(c) Even when the extension of authority is exercised, the period of original classification shall not be greater than twenty years from the date of original classification, except that the original classification of "foreign government information" pursuant to paragraph (b)(1) of this section may be for a period of thirty years.

§ 2008.7 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the Information Security Oversight Committee. Action on such challenges shall be taken 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

Subpart C—Derivative Classification

§ 2008.8 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

§ 2008.9 Classification guides.

Classification guides shall be issued by the Management Office pursuant to section 2-2 of the order. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be identified readily.

Subpart D—Declassification and Downgrading

§ 2008.10 Declassification authority.

The Special Representative for Trade Negotiations is authorized to declassify documents in accordance with section 3-3 of Executive Order 12065 and shall designate additional officials at the lowest practicable level to exercise declassification and downgrading authority.

§ 2008.11 Mandatory review for declassification.

(a) *Requests for mandatory review.* (1) Requests for mandatory review for declassification under section 3-501 of Executive Order 12065 must be in writing and should be addressed to:

Attn.: General Counsel (Mandatory Review Request), Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the Special Trade Representative's determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the Office of the Special Representative for Trade Negotiations Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records:* $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents:* Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) When fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees higher than that amount, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an ad-

vance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the Office of the Special Representative for Trade Negotiations until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to U.S. Treasurer and mailed to the Office of the Special Representative for Trade Negotiations, 1800 G St., NW., Washington, DC.

(4) A receipt for fees paid will be given only upon request. No refund of fees paid for services actually rendered will be made.

(5) The Office of the Special Representative for Trade Negotiations may waive all or part of any fee provided for in this section when it is deemed to be in the interest of either the Agency or the general public.

§ 2008.12 Foreign government information.

The Office of the Special Representative for Trade Negotiations shall, in consultation with the Archivist and in accordance with the provisions of section 3-404 of Executive Order 12065, develop systematic review guidelines for review of foreign government information for declassification thirty years from the date of original classification.

§ 2008.13 Systematic review guidelines.

Within 180 days after the effective date of the order, the Office of the Special Representative for Trade Negotiations shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic review of classified information originated by the Office of the Special Representative for Trade Negotiations twenty years from the date of original classification. These guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond twenty years is needed. Information not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically twenty years from the date of original classification.

Subpart E—Safeguards

§ 2008.14 Storage.

The Office of the Special Representative for Trade Negotiations shall store all classified material in accordance with ISOO Directive of October 5, 1978 (43 FR 46281).

§ 2008.15 General restrictions on access.

Access to classified information shall be restricted as required by section 4-1 of Executive Order 12065.

§ 2008.16 Security education program.

(a) The Office of the Special Representative for Trade Negotiations will inform agency personnel having access to classified information of all requirements of Executive Order 12065 and ISOO Directive I.

(b) The Director, Office of Management, shall be charged with the implementation of this security education program and shall issue detailed procedures for the use of the agency personnel in fulfilling their day-to-day security responsibilities.

§ 2008.17 Historical researchers and former Presidential appointees.

The requirement in section 4-101 of Executive Order 12065 with respect to access to classified information may be waived for historical researchers and former Presidential appointees in accordance with section 4-301 of that order.

Subpart F—Implementation and Review

§ 2008.18 Information Security Oversight Committee.

The Office of the Special Representative for Trade Negotiations Information Security Oversight Committee shall be co-chaired by the General

Counsel of the Office of the Special Representative for Trade Negotiations and the Director, Office of Management. The chairs shall also be responsible with the Committee for conducting and active oversight program to ensure effective implementation of Executive Order 12065, and ISOO implementing directives. The Committee shall:

(a) Establish a security education program to inform personnel who have access to classified information with the requirements of Executive Order 12065, and ISOO implementing directives.

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(c) Act on all suggestions and complaints concerning the administration of the information security program.

(d) Establish and monitor policies and procedures within the Office of the Special Representative for Trade Negotiations to ensure the orderly and effective declassification of documents.

(e) Recommend to the Special Trade Representative appropriate administrative action to correct abuses or violations of any provision of Executive Order 12065.

(f) Consider and decide other questions concerning classification and declassification that may be brought before it.

§ 2008.19 Classification Review Committee.

The Classification Review Committee shall be chaired by the Special Trade Representative. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of Executive Order 12065. The Committee shall consist of Special Representative, two Deputies and the General Counsel.

PART 2009—PROCEDURES FOR REPRESENTATIONS UNDER SECTION 422 OF THE TRADE AGREEMENTS ACT OF 1979

Sec.
2009.0 Submission of representation.
2009.1 Information required in representation.

§ 2009.0 Submission of representation.

(a) Any—(1) Part to the Agreement; or

(2) Foreign country that is not a Party to the Agreement but is found by the United States Trade Representative, ("Trade Representative") to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement, may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement on Technical Barriers to Trade.

(b) All representations under section 422 of the Trade Agreements Act of 1979 ("section 422") shall be addressed to the United States Trade Representative, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Alternatively, such a representation may be made by diplomatic correspondence and may be accepted by the Trade Representative.

(c) "The Agreement", a "Party to the Agreement" and "standards-related activity" are defined as in section 451 of the Act (19 U.S.C. 2561).

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551-2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

§ 2009.1 Information required in representation.

(a) Each representation submitted under section 422 should state clearly on the first page that the representation is a request for action with respect to the obligations of the United States under the Agreement, and should contain the following information:

(1) The foreign country making the representation, the division of the foreign country's government representing that country's interest, the person(s) within the division who is (are) coordinating the foreign country's representation.

(2) A description of the standards-related activity at issues, including, whenever possible, copies of the standards-related activity's provisions.

(3) Identification of the foreign goods or services affected by the standards-related activity at issue.

(4) A statement of how the standards-related activity concerned is alleged to violate the obligations of the United States under the Agreement. This statement shoud indicate with particularity which such obligations are alleged to be violated.

(5) Indication as to whether the foreign country has officially petitioned, filed or complained for relief concerning the same subject matter as this representation to any international forum.

(b) Each representation submitted under section 422 of the Act must contain information sufficient to provide a reasonable indication that the standards-related activity concerned is having a significant trade effect, including (but not limited to) the volume of trade in the goods concerned.

(c) Representations should be submitted in 10 copies.

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551-2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

PART 2011—SUGAR

GENERAL

Sec.
2011.1 General statement.
2011.2 Definitions.

CERTIFICATE REQUIREMENT

2011.3 Entry into the United States.
2011.4 Waiver.

Sec.

ISSUANCE OF CERTIFICATES

2011.5 Form and applicability of certificate.
2011.6 Agreements with foreign countries.
2011.7 Issuance of certificates to foreign countries.
2011.8 Execution and issuance of certificates by the certifying authority.

TRANSITIONAL PROVISIONS

2011.9 Exemption from certificate requirements.

OTHER PROVISIONS

2011.10 Suspension or revocation of individual certificates.
2011.11 Suspension of certificate system.

AUTHORITY: Constitution and statutes of the United States, including sec. 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); International Sugar Agreement, 1977, Implementation Act, Pub. L. 96-236 (7 U.S.C. 3601 *et seq.*); E.O. 12224, July 1, 1980 (45 FR 45243); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); Headnotes 2 and 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202).

SOURCE: 47 FR 34779, Aug. 11, 1982, unless otherwise noted.

GENERAL

§ 2011.1 General statement.

These regulations set forth the terms and conditions under which certificates of eligibility will be issued to participating foreign countries which have been allocated a U.S. sugar import quota. Except as otherwise provided below, sugar from a participating foreign country may not be entered or withdrawn from warehouse for consumption unless such sugar is accompanied by a certificate of eligibility. It has been determined that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under the International Sugar Agreement, 1977. It has further been determined that these regulations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT), and that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under GATT.

§ 2011.2 Definitions.

Unless the context otherwise requires, for the purposes of this part the following terms shall have the meanings assigned below.

(a) The term "Secretary" means the Secretary of Agriculture, or any official to whom the Secretary has delegated the authority, or to whom authority may hereafter be delegated, to act in his place.

(b) The term "sugar" means sugar, sirups, and molasses as defined in items 155.20 and 155.30 of the tariff schedules of the United States.

(c) The term "Headnote 3" means headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States, including any amendments thereto.

(d) The term "foreign country" means any foreign country or area which has been allocated a sugar import quota under Headnote 3.

(e) The term "quota period" means any period of time for which a sugar import quota has been established in accordance with Headnote 3.

(f) The term "appropriate customs official" means the district or area Director of Customs, his designee, or any other customs officer of similar authority and responsibility, for the customs district in which the port of entry is located.

(g) The terms "certificate of eligibility" or "certificate" mean a certificate issued by the Secretary to a participating foreign country which authorizes the entry into the United States of sugar produced in such country.

(h) The term "person" means an individual, partnership, corporation, association, estate, trust, or other legal entity, and wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(i) The term "raw value" shall have the same meaning which is assigned to such term for purposes of Headnote 3.

(j) The term "certifying authority" means a person designated by a participating foreign country who is authorized to execute and issue certificates of eligibility on behalf of such foreign country.

(k) The term "participating foreign country" means a foreign country which has entered into an agreement or arrangement (as set forth in § 2011.6(b), of this part) providing for the participation of such country in the issuance of certificates of eligibility.

(l) The term "entry" means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

CERTIFICATE REQUIREMENT

§ 2011.3 Entry into the United States.

(a) *General.* Except as otherwise provided herein (see §§ 2011.3(b), 2011.4, 2011.6, 2011.9, 2011.11), no sugar which is the product of a participating foreign country may be entered or withdrawn from warehouse for consumption after 12:01 a.m. August 11, 1982 unless at the time of entry the person entering such sugar presents to the appropriate customs official valid and properly executed certificates of eligibility for such sugar.

(b) *De minimis amounts.* (1) Individual shipments of sugar into the United States which are less than 20 short tons shall be exempt from the requirements of this part. However, the Secretary may modify, suspend, or otherwise limit this exemption if he determines that such action is necessary and appropriate. Notice of any such modification, suspension, or limitation shall be published by the Secretary in the FEDERAL REGISTER.

(2) Sugar entered under the exemption set forth in this paragraph (b) of this section shall be counted against the quota allocation of the country in which it was produced for the quota period in which the sugar is entered or withdrawn from warehouse for consumption.

(c) *Determination of weight.* (1) For purposes of determining the amount of sugar which may be entered into the United States under a certificate of eligibility, sugar shall be entered on the basis of the actual weight of the sugar, as determined by the appropriate customs official. No adjustments in weight shall be made for differences in polarization.

(2) The actual weight of the sugar entered into the United States may not exceed the weight specified on the certificate of eligibility by more than

five percent. Such tolerance may be modified by the Secretary if the Secretary finds that such modification is appropriate to carry out the provisions of this part. Notice of any such modification shall be published by the Secretary in the FEDERAL REGISTER.

(3) The provisions of this paragraph (c) of this section shall not affect the manner in which the amount of sugar (raw value) entered into the United States is determined for purposes of administering the import quotas imposed under Headnote 3.

§ 2011.4 Waiver.

(a) *General.* The Secretary may waive, with respect to individual shipments, any or all of the requirements of this part if he determines that a waiver will not impair the proper operation of the sugar quota system and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in the transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate of eligibility.

(b) *Request for waiver.* A request for a waiver must be made to the Secretary in writing. The request need not follow any specific format. However, the request should set forth in detail all pertinent information relating to the shipment in question and the basis upon which the waiver should be granted.

(c) *Issuance of waiver.* The applicant for the waiver and the Secretary of the Treasury shall be notified in writing of any waiver granted under the authority of this section. The Secretary may attach any terms, conditions or limitations to the waiver which he determines are appropriate.

ISSUANCE OF CERTIFICATES

§ 2011.5 Form and applicability of certificate.

(a) *Contents.* Each certificate shall be numbered and identified by foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate shall provide spaces into which the following information must be inserted by the certifying authority of the participating foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information may also be specified on the certificate by the certifying authority, if known: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States. The certificate shall also provide an area where the certifying authority of the participating foreign country shall: affix a seal or other form of authentication; and sign and date the certificate.

(b) *Other limitations.* The Secretary may attach such other terms, limitations, or conditions to individual certificates of eligibility as he determines are appropriate to carry out the purposes of this part. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exeed 10,000 short tons.

(c) *Applicability of the certificate.* The certificate of eligibility shall only be applicable to the shipment of sugar for which it was executed and issued by the certifying authority.

§ 2011.6 Agreements with foreign countries.

(a) *Entry into agreements or arrangements.* Agreements or arrangements providing for participation in the certificate system will be entered into by the United States Government with the governments of foreign countries. Such agreements or arrangements may provide for the designation of certifying authorities, the designation of seals or other forms of authentication, the transmittal and exchange of pertinent information, and other appropriate means or forms of cooperation.

(b) *List of participating foreign countries.* The U.S. Trade Representative shall maintain a current and publicly available list of all participating foreign countries, and shall notify the Commissioner of Customs, the Secretary of State, and the Secretary of Agriculture of any changes therein.

(c) *Non-participating foreign countries.* If a foreign country has not entered into an agreement or arrangement under paragraph (a) of this section to participate in the certificate system, no certificate of eligibility shall be required in order to enter into the United States sugar which is the product of such country.

(d) *Change in status of a foreign country.* If a non-participating foreign country should subsequently become a participating foreign country, or if a participating foreign country should withdraw from participation in the certificate system, the Secretary may prescribe additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition in the change of status of the foreign country in question.

§ 2011.7 Issuance of certificates to foreign countries.

(a) *Amount and timing.* The Secretary may issue certificates of eligibility to participating foreign countries for any quota period in such amounts and at such times as he determines are appropriate to enable the participating foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting periods, U.S. import requirements, and other relevant factors.

(b) *Adjustments.* The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period in order to reflect: (1) The entry or anticipated entry of sugar by a foreign country into the United States which is exempt from the certificate requirements of § 2011.3 under the provisions of § 2011.9 of this part; (2) the amount of sugar entered into warehouse during previous quota periods; (3) anticipated differences in actual weight and weight determined on a raw value basis; and (4) other relevant factors.

§ 2011.8 Execution and issuance of certificates by the certifying authority.

(a) *Execution.* The certificate of eligibility shall be executed by the certifying authority by: (1) Entering on the certificate the information required under § 2011.5 of this part; (2) affixing a seal or other form of authentication to the certificate; and (3) signing and dating the certificate. A certificate shall not be considered valid unless it is executed and issued in accordance with this section.

(b) *Issuance.* The executed certificate shall be issued by the certifying authority to the shipper or consignee specified on the certificate.

(c) *Modifications by the certifying authority.* The terms and conditions set forth in the certificate may not be modified, added to, or deleted by the certifying authority without the prior written approval of the Secretary.

TRANSITIONAL PROVISIONS

§ 2011.9 Exemptions from certificate requirements.

(a) *General exemption.* Notwithstanding the foregoing provisions of this part, sugar from a participating country may be entered or withdrawn from warehouse for consumption without the presentation of a certificate of eligibility as required in § 2011.3 if such sugar meets the following requirements:

(1) The sugar must have been exported from the country of origin prior to August 11, 1982 and (2) the sugar must have been imported directly into the United States, as determined by the appropriate customs officials, in accordance with the criteria set forth at 19 CFR 10.174, 10.175 (1982). Sugar entered into warehouse prior to August 11, 1982 shall be considered as having met such requirements. Sugar entering the United States under this exemption shall be counted against the applicable quota allocation of the foreign country in which it was produced for the quota period in which such sugar is entered, or withdrawn from warehouse, for consumption.

(b) *Limitation.* The general exemption set forth in paragraph (a) of this section shall only apply to sugar entered for consumption or entered into warehouse prior to October 1, 1982.

OTHER PROVISIONS

§ 2011.10 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Secretary may suspend, revoke, modify or add further limitations to any certificate which has been issued to a certifying authority if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar.

(b) *Reinstatement.* The Secretary may reinstate or reissue any certificate which was previously suspended, revoked, modified, or otherwise limited under the authority of this section.

§ 2011.11 Suspension of certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this part whenever he determines that such action is appropriate to implement U.S. obligations under the International Sugar Agreement, 1977, and that such action gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this part if he finds that the consideration set forth in the previous paragraph so warrants. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this part, the Secretary may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition.

PART 2013—SPECIALTY SUGAR

GENERAL

Sec.
2013.1 General statement.
2013.2 Definitions.
2013.3 Issuance of specialty sugar certificate.
2013.4 Entry of specialty sugars.
2013.5 Application for a specialty sugar certificate.
2013.6 Suspension or revocation of individual certificates.
2013.7 Suspension of certificate system.

AUTHORITY: Sec. 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); International Sugar Agreement, 1977, Implementation Act, Pub. L. 96-236 (7 U.S.C. 3601 et seq.); Executive Order 12224, July 1, 1980 (45 FR 45243); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); headnotes 2 and 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202).

SOURCE: 48 FR 28630, June 23, 1983, unless otherwise noted.

GENERAL

§ 2013.1 General statement.

These regulations set forth the terms and conditions under which specialty sugar certificates will be issued to U.S. importers importing specialty sugars from countries set forth in headnote 3(c)(ii) of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS). Except as otherwise provided below, specialty sugars imported from the aforementioned countries may not be entered into the U.S. customs territory unless accompanied by a specialty sugar certificate. It has been determined that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under the International Sugar Agreement, 1977. It has further been determined that these regulations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT), and that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under the GATT.

§ 2013.2 Definitions.

For purposes of this rule:

(a) The term "appropriate Customs official" means the District or Area Director of Customs, his or her designee, or any other Customs officer of similar authority and responsibility for the Customs district in which the port of entry is located.

(b) The term "Certifying Authority" means the Chief, Sugar Group, Foreign Agricultural Service, U.S. Department of Agriculture.

(c) The term "date of entry" means the date on which the appropriate Customs entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate Customs Officer.

(d) The term "Department" means the U.S. Department of Agriculture.

(e) The term "importer" means any person in the United States importing specialty sugars into the United States.

(f) The term "import quota" means any quota on imports of any sugars, sirups, or molasses provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States applied under the authority of Presidential Proclamation 4941 of May 5, 1982 and any modifications thereto.

(g) The term "person" means any individual, partnership, corporation, association, estate, trust, or any other business entity, and, whenever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(h) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in his place.

(i) The term "specialty sugars" means sugars, sirups, and molasses provided for in items 155.20 or 155.30 of the Tariff Schedules of the United States which, in addition:

(1) Are not currently commercially produced in the United States or reasonably available from domestic sources,

(2) Are the product of a country listed in headnote 3(c)(ii) of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States, and

(3) Require no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.

(j) The term "Specialty Sugar Certificate" means a certificate issued by the Certifying Authority permitting the entry of specialty sugars as defined in paragraph (i) of this section.

§ 2013.3 Issuance of specialty sugar certificate.

(a) Specialty sugars may be imported into the United States from countries listed in TSUS headnote 3(c)(ii) of subpart A, part 10, schedule 1 of the TSUS.

(b) A Specialty Sugar Certificate (hereinafter certificate) may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations or restrictions as the Certifying Authority in his discretion, deems necessary. The Certifying Authority will issue a certificate if sufficient evidence has been provided to permit the Certifying Authority to make a reasonable determination that the sugar proposed to be imported under the certificate fits the definition of specialty sugars in § 2013.2(i) of this part. The issuance of a certificate shall be considered *prima facie* evidence that the sugar specified therein qualify as specialty sugars.

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate, and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugars, but only permits entry of such sugar if the applicable quota or quotas are not already filled.

§ 2013.4 Entry of specialty sugars.

An importer or its agent may enter specialty sugars into the customs territory of the United States under a certificate issued pursuant to this part. The certificate must be presented to the appropriate Customs official at the time of entry. Entry of specialty sugars shall be allowed only in conformity with the description of sugars allowed to be imported and other conditions of the certificate, if any.

§ 2013.5 Application for a specialty sugar certificate.

Applicants for certificates for the import of specialty sugars must apply in writing to the Certifying Authority. Such letter of application shall contain at a minimum the following information:

(a) The name and address of the applicant.

(b) A statement of the anticipated quantity of specialty sugars to be imported, if known.

(c) The appropriate five-digit TSUS item number.

(d) A description of the specialty sugars the importer expects to import during the period of the certificate; the description should include the manufacturer's or exporter's usual trade name or designation and use thereof, and the importer's use thereof.

(e) Sufficient evidence to permit the Certifying Authority to make a reasonable determination that such sugars are specialty sugars within the definition in § 2013.2(i) of this part.

(f) The name of the anticipated consumer of the specialty sugars under the certificate, if known, at time of application.

(g) The anticipated date of entry, if known at time of application.

The Certifying Authority may waive any provision of this section for good cause if it is determined that such a waiver will not adversely affect the implementation of this part.

§ 2013.6 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Certifying Authority may suspend, revoke, modify or add limitations to any certificate which has been issued if he or she determines that such action or actions is necessary to ensure the effective operation of the import quota system for specialty sugars or determines that the importer has failed to comply with the requirements of this part.

(b) *Reinstatement.* The Certifying Authority may reinstate or reissue any certificate which was previously suspended, revoked, modified or otherwise limited under the authority of this section.

(c) The determination of the Certifying Authority under subsection (a) that the importer has failed to comply with the requirements of this part may be appealed to the Director, Horticultural and Tropical Products Division, Foreign Agricultural Service (FAS), within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing specifically stating any reason as to why such determination should not stand. The Director, Horticultural and Tropical Products Division, FAS will provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, within five working days of the notification of the decision of the Director, Horticultural and Tropical Products, FAS.

§ 2013.7 Suspension of certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this part whenever he determines that the specialty sugars provisions of headnote 3 of subpart A, part 10, schedule 1 of the TSUS are no longer in force or that this part is no longer necessary to implement those provisions. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this part if he finds that the considerations set forth in the previous paragraph so warrant. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional Provisions.* In the case of any suspension or reinstatement of the certificate system established by this part, the Certifying Authority may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate Customs officials in order to ensure an orderly transition.

(Approved by the Office of Management and Budget under control number 0300-003)

Appendix A to Chapter XX—Administration of the Trade Agreements Program

Text of Executive Order No. 11846 of Mar. 27, 1975 (40 FR 14291).

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Pub. L. 93-618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *The Trade Agreements Program.* The "trade agreements program" includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, section 350 of the Tariff Act of 1930, as amended, the Trade Expansion Act of 1962, as amended, or the Act.

SEC. 2. *The Special Representative for Trade Negotiations.* (a) The Special Representative for Trade Negotiations, hereinafter referred to as the Special Representative, in addition to the functions conferred upon him by the Act, including section 141 thereof, and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) The Special Representative, except where otherwise expressly provided by statute, Executive order, or instructions of the President, shall be the chief representative of the United States for each negotiation under the trade agreements program and shall participate in other negotiations which may have a direct and significant impact on trade.

(c) The Special Representative shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Act. At the request of the Special Representative, other agencies shall assist in the preparation of that report.

(d) The Special Representative, except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order, and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act, including those established or delegated by this Order, the Special Representative shall also consult with the East-West Foreign Trade Board.

(f) The Special Representative shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order 11030, as amended, except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative, and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

SEC. 3. *The Trade Policy Committee.* (a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Act, there is established the Trade Policy Committee hereinafter referred to as the Committee. The Committee shall be composed of:

(1) The Special Representative, who shall be Chairman.

(2) The Secretary of State.

(3) The Secretary of the Treasury.

(4) The Secretary of Defense.

(5) The Attorney General.

(6) The Secretary of the Interior.

(7) The Secretary of Agriculture.

(8) The Secretary of Commerce.

(9) The Secretary of Labor.

(10) The Assistant to the President for Economic Affairs.

(11) The Executive Director of the Council on International Economic Policy. Each member of the Committee may designate an officer of his agency, whose status is not below that of an Assistant Secretary, to serve in his stead, when he is unable to attend any meetings of the Committee. The Chairman, as he deems appropriate, may invite representatives from other agencies to attend the meetings of the Committee.

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended, upon the inter-agency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c) The recommendations made by the Committee under section 242(b)(1) of the Trade Expansion Act of 1962, as amended, with respect to basic policy issues arising in the administration of the trade agreements program, as approved or modified by the President, shall guide the administration of the trade agreements program. The Special Representative or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under section 242(b)(2) of the Trade Expansion Act of 1962, as amended, the Committee shall, through the Special Representative, request the advice of the Adjustment Assistance Coordinating Committee, established by section 281 of the Act.

(e) The Committee shall advise the President as to what action, if any, he should take under section 337(g) of the Tariff Act of 1930, as amended by section 341 of the Act, relating to unfair practices in import trade.

(f) The Trade Expansion Act Advisory Committee established by Section 4 of Executive Order 11075 of January 15, 1963, is abolished and all of its records are transferred to the Trade Policy Committee.

SEC. 4. *Trade Negotiations Under Title I of the Act.* (a) The functions of the President under section 102 of the Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative.

(b) The Special Representative, after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under section 131(c) of the Act with respect to advice of the International Trade Commission and under section 132 of the Act with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative. The functions of the President under section 133 of the Act with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative, who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under section 135 of the Act with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I), except that of reporting annually to Congress, which are applicable to advisory committees under the Act are delegated to the Special Representative. In establishing and organizing general policy advisory committees or sector advisory committees under section 135(c) of the Act, the Special Representative shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Act are hereby delegated to the Special Representative. The International Trade Commission is requested to advise the Special Representative with respect to determining such ad valorem amounts and equivalents. The Special Representative shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under section 131 of the Act, and other advice or reports by the International Trade Commission to the President or the Special Representative, the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

SEC. 5. *Import Relief and Market Disruption.* (a) The Special Representative is authorized to request from the International Trade Commission the information specified in sections 202(d) and 203(i) (1) and (2) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under section 203(g) of the Act, regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962, regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

SEC. 6. *Unfair Trade Practices.* (a) The Special Representative, acting through an interagency committee which he shall designate for such purpose, shall provide the opportunity for the presentation of views, under sections 301(d)(1) and 301(e)(1) of the Act, with respect to unfair or unreasonable foreign trade practices and with respect to the United States response thereto.

(b) The Special Representative shall provide for appropriate public hearings under section 301(e)(2) of the Act; and, shall issue regulations concerning the filing of requests for, and the conduct of, such hearings.

(c) The Special Representative is authorized to request, pursuant to section 301(e)(3) of the Act, from the International Trade Commission, its views as to the probable impact on the economy of the United States of any action under section 301(a) of the Act.

SEC. 7. *East-West Foreign Trade Board.* (a) In accordance with section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.

(2) The Secretary of the Treasury.

(3) The Secretary of Agriculture.

(4) The Secretary of Commerce.

(5) The Special Representative for Trade Negotiations.

(6) The Director of the Office of Management and Budget.

(7) The Executive Director of the Council on International Economic Policy.

(8) The President of the Export-Import Bank of the United States.

(9) The Assistant to the President for Economic Affairs.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by section 411 of the Act and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with sections 402 and 409 of the Act (dealing with freedom of emigration) and section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order 11789 of June 25, 1974, as amended by section 6(d) of Executive Order 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

SEC. 8. *Generalized System of Preferences.* (a) The Special Representative, in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act.

(b) The Committee, through the Special Representative, shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

SEC. 9. *Prior Executive Orders.* (a) Executive Order 11789 of June 25, 1974, and Section 6(d) of Executive Order 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of the Executive Order 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order 11075, and Executive Order 11106 of April 18, 1963 and Executive Order 11113 of June 13, 1963, are hereby revoked.

[40 FR 18422, Apr. 28, 1975]

Subtitle D—Regulations Relating to Telecommunications and Information

CHAPTER XXIII—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE

Part		*Page*
2301	Public Telecommunications Facilities Program	478

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—General

Sec.

2301.1 Purpose and scope.
2301.2 Other pertinent rules and regulations.
2301.3 Definitions.

Subpart B—Eligibility and Application Procedures

2301.4 Who can get a PTFP grant and what can they use it for?
2301.5 How do I file an application?
2301.6 What happens if my application is incomplete or untimely?
2301.7 What if I want to change some of the information in my application?
2301.8 Service of applications.
2301.9 Publication of filing.
2301.10 Closing date.
2301.11 Federal Communications Commission authorization.
2301.12 What happens after I file an application?
2301.13 Do I have a right to appeal?
2301.14 Can members of the public comment on applications?
2301.15 What does the Agency do with these comments?
2301.16 Coordination with interested agencies and organizations.
2301.17 Funding criteria for construction applications.
2301.18 Funding criteria for planning applications.
2301.19 Action on all applications.

Subpart C—Program Purposes and Special Consideration

2301.20 Program purposes.
2301.21 Special consideration.

Subpart D—Federal Financial Participation

2301.22 Amount of the Federal grant.
2301.23 Payment of the Federal grant.
2301.24 Items and Costs ineligible for Federal funding.

Subpart E—Accountability for Federal Funds

2301.25 Retention of records.
2301.26 Copies of planning studies; Final certification of construction projects.
2301.27 Annual status report for construction grants.

Sec.

Subpart F—Control and Use of Facilities

2301.28 What conditions are attached to the Federal grant?
2301.29 Nondiscrimination; Rules incorporated by reference.
2301.30 How can a grant be terminated?
2301.31 Equipment.
2301.32 Waiver.
APPENDIX A TO PART 2301

AUTHORITY: Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, *et seq.;* as amended by the Public Broadcasting Amendments Act of 1981.

SOURCE: 49 FR 36600, Sept. 18, 1984, unless otherwise noted.

Subpart A—General

§ 2301.1 Purpose and scope.

These rules prescribe policies and procedures to insure the fair, equitable, and uniform treatment of applications for planning and construction grants for public telecommunications facilities. They implement the provisions of Part IV of Title III of the Communications Act of 1934, as amended.

§ 2301.2 Other pertinent rules and regulations.

Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcast stations and public broadcast stations are contained in the rules and regulations of the Federal Communications Commission 47 CFR Part 1 (Practice and procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distribution and Services.)

§ 2301.3 Definitions.

"Act" means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390-94 and 397-99, as amended.

"Administrator" means the Assistant Secretary for Communications and

Information of the U.S. Department of Commerce.

"Advertisement" means any message or other programming material which is broadcast or otherwise transmitted in exchange for remuneration, and which is intended: to promote any service, facility, or product offered by any person who is engaged in such offering for profit; to express the views of any person with respect to any matter of public importance or interest except where prohibited by law.

"Agency" means the National Telecommunications and Information Administration of the U.S. Department of Commerce.

"Commission" means the Federal Communications Commission.

"Construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

"de novo" means anew, afresh, or for a second time.

"Federal interest period" means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the completion date of the project.

"Nonbroadcast" means a system for the distribution of electronic signals by a means other than broadcasting. Examples of nonbroadcast are ITFS, SCA, teletext, and cable.

"Noncommercial educational broadcast station" or a "public broadcast station" means a television or radio broadcast station which is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial programs.

"Noncommercial telecommunications entity" means any enterprise which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and which has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

"Nonprofit" (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Operational cost" means those approved costs incurred in the operation of an entity or station such as overhead, labor, material, contracted services and including capital outlay and debt service.

"Preoperational expenses" means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing public telecommunications facilities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"PTFP" means the Public Telecommunications Facilities Program.

"PTFP Director" means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

"Public telecommunications entity" means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

"Public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, signal processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

"Public telecommunications services" means noncommercial instructional, community service, public service, public affairs, educational and cultural radio and television programs, that may be transmitted by means of electronic communications by a public telecommunications entity.

"State" includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"System of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Who can get a PTFP grant and what can they use it for?

(a) Eligibility of applicants—In order to apply for and receive a PTFP grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(5) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services;

(6) A state or local government or agency or a political or special purpose subdivision of a state.

(b) Eligibility of projects—An applicant which is eligible under paragraph (a) of this section, may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities into areas currently receiving public telecommunications services;

(4) The development of public telecommunications facilities owned by, operated by, or available to minorities and women;

(5) The improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(c) In addition any applicant, whose proposal requires an authorization from the Commission, must be eligible to receive such authorization.

(d)(1) If a prospective applicant is unsure whether it is eligible to receive a PTFP grant or whether its proposed project is eligible for PTFP funding, the prospective applicant may seek a determination from the Agency at any time, except during the period between the closing date for the filing of applications and the publication by the Agency of the list of applications which the Agency has accepted for filing.

(2)(i) To obtain an eligibility determination from the Agency, a prospective applicant must send a letter requesting an eligibility determination to the PTFP Director, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(ii) In this letter the prospective applicant must:

(A) Describe the proposed project;

(B) Include a copy of the organization's articles of incorporation and bylaws, or other similar documentation, which specifies the nature and powers of the prospective applicant; and

(C) If the prospective applicant is a nonprofit foundation, corporation, institution, or association, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or similar documentation.

(3) A favorable eligibility determination does not guarantee that the Agency will accept an application for filing or award a grant.

(4) An applicant may appeal an unfavorable eligibility determination to the Administrator under § 2301.13.

§ 2301.5 How do I file an application?

(a) *New applications.* To apply for a PTFP grant an applicant must file a *timely* and *complete* application. A prospective applicant may obtain an approved Agency application form from the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(1) To file a *timely* application an applicant must file an application on or before the closing date set for the filing of applications by the Administrator under § 2301.10 of the rules. The application must:

(i) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230;

(ii) All applications, whether mailed or hand delivered must be received in the Department of Commerce directed to PTFP, Room 4625, no later than 5:00 p.m. on the closing date.

(2) To file a *complete* application, the applicant must submit an original and one copy of the Agency application form with the signature of an officer of the applicant, who is legally authorized to sign for the applicant with the assurances and other information described below:

(i) Assurances—

(A) The applicant is an eligible entity as described in § 2301.4(a) of the rules;

(B) The facilities to be acquired and installed under the project will be owned or leased (as consistent with § 2301.24) by the applicant;

(C) The applicant will control the operation of, and maintain, any public telecommunications facilities obtained with PTFP funds during the period of Federal interest;

(D) The applicant will have when needed the necessary funds to construct any public telecommunications facilities for which the Agency has granted matching funds;

(E) The applicant will have the funds necessary to operate and maintain those facilities once constructed;

(F) The applicant will use PTFP funded facilities and any monies generated through the use of PTFP funded facilities primarily for public telecommunications purposes;

(G) The applicant will not use or allow the use of any PTFP funded facilities for other than public telecommunications purposes when such uses would interfere with the use of the facilities for the provision of public telecommunications services;

(H) The applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for such public telecommunications facilities, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(I) The applicant has taken into account all non-Federal financial sources available for the project and the non-Federal share stated by the applicant as being available for use in the project is the maximum amount available from such sources;

(J) The applicant will make the most economical and efficient use of the grant;

(K) The applicant will hold appropriate title or lease to the site on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect, and remove such apparatus, sufficient to assure the continuity of operation for a period of ten (10) years following the completion of the project;

(L) During the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian;

(M) The applicant will maintain insurance to protect the Federal investment from perils for the 10-year term of the Federal investment subject to § 2301.29(b)(7);

(N) The applicant will abide by the current reporting requirements of § 2301.27 as amended:

(ii) Other information—

(A) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to the funding criteria;

(B) A copy of the applicant's articles of incorporation, by-laws, board of directors, and other similar documentation specifying the nature and powers of the applicant;

(C) If the applicant is a nonprofit foundation, corporation, institution, or association, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code; or other legal documentation of nonprofit status;

(D) A copy of any environmental impact statement or other environmental assessment document prepared in connection with the proposed projects as may be required by any Federal, state, or local law or regulation;

(E) If the application is for a construction project, a five (5) year plan outlining the applicant's projected facilities requirements and the projected costs of those facilities;

(F) If the application is for a construction project, information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is no duplication of services;

(G) An inventory of all public telecommunications facilities (if any) with manufacturers model number, production year, and the date of acquisition of the equipment which is currently owned by the applicant;

(H) If special consideration is requested under section 392(f) of the Act, information detailing the basis for the request on the form provided by the Agency;

(I) A statement by the applicant certifying that the applicant has served copies of its application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served;

(J) A statement by the applicant certifying that the applicant is causing to be published in a newspaper of general circulation in the community to be served the notice required in § 2301.9 of the rules and two copies of the notice as it is to appear in the newspaper with notations of the dates on which the notice is to be or has been published;

(K) An opinion letter from the applicant's attorney stating that the applicant will have fee simple title or a long-term lease (e.g., a ten-year lease) or an option to obtain same to any real or personal property necessary for the installation of major fixed equipment (such as a broadcast transmitter or tower);

(L) Meaningful documentation, including as necessary the proper FCC authorization cited in §§ 2301.8 and 2301.11, supporting the applicant's request for equipment to render the proposed service. If applicable in certain cases where equipment is requested, documentation indicating excessive downtime or high incident of repair;

(M) A full and detailed explanation of any discrimination complaints filed against it before any governmental agency.

(b) *Deferred applicant.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.19, if the applicant has not substantially changed the stated purpose of the application.

(2) To reactivate a deferred application, the applicant must file a written request with the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, D.C. 20230. The request must be *timely* and *complete*. In addition, all deferred applications will be subject to § 2301.4 eligibility determination de novo.

(i) To file a *timely* request, an applicant must file the request on or before the date established as the closing date for the filing of applications under § 2301.10 of the rules. The request must:

(A) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, D.C. 20230;

(B) All reactivated applications, whether mailed or hand delivered, must be received no later than 5:00 p.m. of the closing date.

(ii) To file a *complete* request, the applicant must submit an original and one copy of the following:

(A) Sections I, II, III, and IV of Part I of the approved Agency application form with the original signature of an officer of the applicant, who is legally authorized to sign for the applicant, a notation of the file number of the earlier application and the current filing date of the amendment;

(B) A brief narrative statement (not more than four (4) pages) describing the proposed project, submitted on the current application form;

(C) An update of availability of operating funds and the necessary non-Federal share of the project;

(D) A revised listing of current eligible project costs, if necessary;

(E) A revised inventory of all public telecommunications facilities currently owned by the applicant (applicants having previously submitted an inventory need only submit updated information);

(F) If the application is for a construction project, a revised five (5) year plan outlining the applicant's projected facilities requirements, and the projected costs of such facilities (applicants having previously submitted a five (5) year plan may submit amendments, which update the plan and do so as not to include the current year);

(G) Current information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is duplication of services;

(H) If special consideration is requested under 47 U.S.C. 293(f) of the Act, current information detailing the basis for the request on the form provided by the Agency;

(I) A statement by the applicant certifying that the applicant has served copies of its reactivated application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served;

(J) A statement by the applicant certifying that the applicant is causing to be published in a newspaper of general circulation in the community to be served the notice required in § 2301.9 of the rules and two copies of the notice as it is to appear in the newspaper with notations of the dates on which the notice is to be or has been published;

(K) A full and detailed explanation of any descrimination complaints filed against it before any governmental agency.

(c) *Additional information*—(1) The Agency may request from the applicant any additional information which the Agency deems necessary or pertinent.

(2) Applicants must promptly provide any additional information which the Agency requests as being necessary or pertinent.

(Approved by the Office of Management and Budget under OMB Control No. 0660-0003)

§ 2301.6 What happens if my application is incomplete or untimely?

(a) *Incomplete applications.* The Agency will return any application which it has found to be incomplete.

(b) *Untimely applications.* The Agency will return any application, substantial amendment to an application or request to reactivate a deferred application which is filed after the closing date.

(c) Applicants, whose applications the Agency returns as being incomplete, may appeal the action to the Administrator under § 2301.13. Applicants, whose applications the Agency returns as being untimely, may not appeal the Agency's action.

§ 2301.7 What if I want to change some of the information in my application?

(a) An applicant, which has filed a *timely* and *complete* application (or request seeking renewed consideration of a deferred application) which results in minor deficiencies may submit minor changes to its application or submit additional information at any time up to 45 calendar days after the closing date for the filing of applications.

(b) To make minor changes to its application, an applicant must submit an original and one copy of the following to the address specified in § 2301.5(a)(1) of this part:

(1) A letter describing in detail the information or documentation which the applicant is making to its application;

(2) Any new material or altered material;

(3) A certification that it has filed a copy of the notice on each of the entities requred under § 2301.8.

(c) Applicants may not submit substantial amendments to their applications (amendments which substantially change the nature or scope of the proposed project) after the closing date.

(d) Applicants which have deferred applications on file with the Agency and submit substantial amendments to their deferred applications will be considered as a new application and must comply with § 2301.5.

§ 2301.8 Service of applications.

On or before the closing date, an applicant which files an application, or an applicant seeking renewed consideration of a deferred application, or a substantial amendment to an application with the PTFP, must serve a copy of its application, request, or substantial amendment and any subsequent amendment(s) of the application on:

(a) The state or local agency (if any) having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state and the community to be served by the proposed projects;

(b) In the case of an application for a construction grant for which Commission authorization is necessary, the Secretary, Federal Communications Commission, Washington, DC 20554;

(c) The state telecommunications agency (if any) in the state in which the channel associated with the project is assigned by the Commission, if the channel in question is assigned jointly to communities in different states, the state agency (if any) in each of the states concerned;

(d) The state telecommunications agency (if any) in any state, any part of which is located within the service area of the proposed facility;

(e) The state office established to review applications under Executive Order 12372, if the state has established such an office and wishes to review these applications.

§ 2301.9 Publication of filing.

On or before the closing date, all applicants must cause to be published in a newspaper of general circulation in the community(ies) to be served, a notice that it has filed an application.

(a) The notice must contain:

(1) The name of the applicant;

(2) The address of the applicant's office where a copy of the application is available to the public;

(3) A brief description of the proposed project; and

(4) The address to which commenting parties should send their comments: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution, NW., Room 4625, Washington, DC 20230.

(b) The notice must be published once a week for two consecutive weeks.

(c) The applicant must submit two copies of the notice as it is to appear or has appeared in the newspaper to the Agency (at the address provided in paragraph (a)(4) of this section) with notations of the dates of publication.

§ 2301.10 Closing date.

The Administrator shall select and publish in the FEDERAL REGISTER a date by which applications for funding in a current fiscal year are to be filed.

§ 2301.11 Federal Communications Commission authorization.

(a) Each applicant whose project requires Commission authorization must file an application for that authorization on or before the closing date for filing of PTFP applications. We recommend submission of applications to the Commission 60 days prior to the PTFP closing date. Such applications should be clearly marked to identify them as a PTFP applicant.

(b) Any Commission authorization required for the project must be in the name of the applicant for the PTFP grant.

(c) If the project is to be associated with an existing station, Commission operating authority for that station must be current and valid.

(d) For any project requiring a new authorization or authorizations from the Commission, the applicant must file with the Agency a copy of each Commission application and any amendments thereto.

(e) If the applicant fails to file the required Commission application or applications by the closing date established pursuant to § 2301.10 of these rules, or if the Commission returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application for Federal financial assistance to the applicant.

(f) No grant will be awarded until confirmation has been received from the Commission that any necessary authorization will be issued.

§ 2301.12 What happens after I file an application?

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and Commission authorization.

(a) If the Agency finds that an application is untimely or incomplete, it will return the application to the applicant and inform the applicant that its application was untimely or incomplete and will not be considered during the present cycle.

(b) If the Agency identifies minor deficiencies, it will notify the applicant and hold the application for 45 calendar days after the closing date to allow the applicant time to correct these deficiencies. If, after this time, the application is still deficient, the Agency will return the application to the applicant and inform the applicant that its application was deficient and will not be considered during the present cycle.

(c) When the Agency finds that either the applicant or the project is ineligible, it will return the application to the applicant and inform the applicant that it or its proposed project is ineligible.

(d) If the Agency finds that a proposed project requires authorization from the Commission and that the applicant did not tender its application for Commission authorization, the Agency will return the application. In returning an application under this paragraph, the Agency will inform the applicant that the Agency cannot consider that applicant's application for a grant during the present grant cycle, because the applicant did not file an application for authority with the Commission.

(e) The Agency will publish a notice in the FEDERAL REGISTER listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of an application, nor does it assure that any particular application will be funded. It merely qualifies that application to compete for funding with other applications accepted for filing.

§ 2301.13 Do I have a right to appeal?

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the applicant's project, or notifying an applicant that its application is incomplete, the applicant may file a written notice of appeal with the Administrator. The notice of appeal must contain a statement by the applicant showing its basis for appealing the Agency's action—i.e., showing that the denial of eligibility or determination of incompleteness is factually or legally incorrect. (If the applicant relies on any written documents or other materials to refute the Agency's action, the applicant should list each item and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.)

(b) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a decision within 30 calendar days.

(c) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(d) All decisions of the Administrator made under paragraph (b) of this section are final.

§ 2301.14 Can members of the public comment on applications?

(a) Any interested party may file comments with the Agency supporting or opposing an application setting forth the grounds for support or opposition, and a certification that a copy of the comments have been mailed (or otherwise provided) to the applicant. Persons commenting on applications must send their comments to: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Persons filing comments on applications must do so:

(1) After the applicant files its application with the PTFP; and

(2) Within 15 calendar days after the Agency publishes a notice of acceptance of applications in the FEDERAL REGISTER.

(c) Within 30 calendar days after the Agency publishes a notice of acceptance of applications in the FEDERAL REGISTER, an applicant may file a reply to any comments opposing its application.

(d) The time periods referred to in paragraphs (a) and (b) of this section may be extended by the Director if good cause is shown.

§ 2301.15 What does the Agency do with these comments?

(a) The Agency will incorporate all comments from the public and any replies to those comments from an applicant in the official application file.

(b) An applicant or an objecting party may not appeal to the Administrator the determination of the Agency to grant or not grant a particular application.

§ 2301.16 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The Commission, with respect to functions which are of interest to or affect functions of the Commission;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; the state office established to review applications under Executive Order 12372, if the state has established such an office and wishes to review these applications.

§ 2301.17 Funding criteria for construction applications.

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The program purposes set forth in § 2301.20 as well as the specific program priorities set forth in the Appendix of these Rules;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area; and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service;

(2) Evaluated alternate technologies, the bases upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(3) Provided meaningful documentation of applicant's equipment requirements;

(4) Provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant producers or will produce programs or other materials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned (or controlled) by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations;

(m) The readiness of the Commission to grant any necessary authorization.

(n) The urgency for funding based on justification of needs.

§ 2301.18 Funding criteria for planning applications.

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate:

(1) Financial, human and support resources necessary to conduct the plan,

(2) Coordination with other telecommunications entities at the local, state, regional and national levels,

(3) Evaluation of alternate technologies and existing services, and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project);

(f) The extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

§ 2301.19 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments and replies filed by interested parties and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration pursuant to § 2301.5; or

(3) Return the application to the applicant with a notice of the grounds and reasons.

(b) Upon the Agency's approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each state educational television radio or telecommunications agency, if any, in any state, any part of which lies within the service area of the applicant's facility;

(3) The Commission; and

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency awards a grant, the grant award document will include grant terms and conditions set forth in Subpart D of the rules and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program.

Subpart C—Program Purposes and Special Consideration

§ 2301.20 Program purposes.

(a) The following criteria, listed in order of priority, shall govern the Agency's determination to fund an application and the amount of the grant awarded:

(1) Whether the application will provide new public telecommunications facilities to extend service to areas not currently receiving such services.

(2) Whether the application will result in the expansion of the service areas of existing public telecommunications entities.

(3) Whether the application will result in the improvement of the capabilities of existing public broadcasting stations or new public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding the purposes among applications listed in paragraph (a) of this section, the Agency may utilize appropriated funds to award grants to applicants who are otherwise eligible for funding, but do not fall within any of the purposes listed in paragraph (a) of this section. Grants made pursuant to this paragraph must fulfill the overall objectives of the Act.

§ 2301.21 Special consideration.

In assessing applications, the Agency will give special consideration to applications which foster ownership/control of, operation of, and participation in public telecommunications entities by minorities and women. NTIA interprets the words "ownership" and "owned" as meaning "control" of an entity "through the possession or exercises of the normal incidents of ownership, participation of the governing board, holding of corporate offices, etc.," and to accord special consideration only where women and/or minorities are either in legal (i.e., more than fifty percent) or actual control of the entity. We will consider the applicant's reported composition of its governing body and the individuals who hold management-level and policy-making positions. The percentage of ownership/control, operation, and participation must be denoted on the Agency's special consideration exhibit form.

Subpart D—Federal Financial Participation

§ 2301.22 Amount of the Federal grant.

(a) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(c) If the actual costs incurred in completing the planning or construction project are less than the estimated project costs, which were the basis for the Agency's determination of the initial grant award, the Agency shall reduce the amount of the final grant award so that the final grant award bears the same ratio to the actual cost of the project as the initial grant award bore to the estimated total project costs. In no case will the final grant award exceed the initial grant award.

(d) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the effective closing date.

(e) NTIA will specify the effective date of the acceptance for filing in the FEDERAL REGISTER notice required under § 2301.12 of the rules.

§ 2301.23 Payment of the Federal grant.

(a) The Agency will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this part. Additionally, with regard to a public telecommunications entity requiring Commission authorization, the Agency will not make any payment until it receives confirmation from the Commission that the Commission has granted any necessary authorization.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, the Agency will make payment to the grantee in such installments consistent with the percentage of project completion, as the Agency may determine. (As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.)

(c) When an applicant completes a construction protect, the Agency will assign a completion data which the Agency will use to calculate the termination date of the Federal interest period. (The completion date will be the date on which the grantee certifies in writing that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.26. If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.)

§ 2301.24 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under tha Act:

(a) *Equipment and supplies:* (1) Vehicles, including those in which mobile equipment is mounted or carried;

(2) Broadcast receiving equipment such as television receivers FM receivers, (except as required by good engineering practices for monitoring the origination or off-air transmission of signals, including vertical interval or subcarrier receivers and decoders for handicap and/or telemetry use, or satellite receivers);

(3) Modifying or strengthening the applicant's tower to accommodate antennas of commercial entities, however strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity is acceptable;

(4) Equipment for motion picture or still photography or processing, including sound synchronization;

(5) Manual film or tape editing equipment, film, recording tape, reels,

cartridge tapes, tape or record cleaning equipment;

(6) Scenery and props, art and graphics supplies and equipment;

(7) Sound insulation devices, cycloramas, draperies, studio clocks and systems, blackboards, office intercoms, telephones and telephone systems, furniture, and the like, excepting consoles required to mount equipment such as audio consoles and video switchers;

(8) Production devices such as prompting systems, timers, on-air lights, background projection systems, sound effects, and the like;

(9) Office equipment, printing and duplication supplies; except for those leased for planning projects under section 392(c) of the Act;

(10) Maintenance equipment such as hand and power tools, storage cabinets and maintenance services and supplies;

(11) Air conditioning for control or equipment rooms, studios, transmitter buildings, mobile units and other operational rooms and offices (except that the cost to provide ventilation of eligible project apparatus as required by good engineering practice and documented in the application is an eligible installation cost);

(12) Equipment and costs involved to provide primary power to the facility up to the output of the main power panel, including transformers, regulators (except those required by good engineering practice to stabilize transmitter RF output), primary power generators and related equipment (except where primary power is not available or it can be documented as being unusable for broadcast);

(13) Expendable items, including spare recording heads, spare lenses, spare circuit components, alignment tapes and other kits normally considered spares except for transmitters spare parts kits and tubes;

(14) Redundant equipment such as spare transmitters or costs associated with same, back-up microwave equipment except for the main studio to transmitter link as required by good engineering practice, auto-logging equipment for remote control interfacing and terminals associated with same;

(15) Such other equipment and supplies as the Agency may determine prior to the award of a grant.

(b) *Other expenses:* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs, except for planning projects under section 392(c) of the Act, and for construction-related activities as defined in section 397(l) of the Act and § 2301.3 of the rules;

(4) Moving costs required by relocation;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

Subpart E—Accountability for Federal Funds

§ 2301.25 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible the following records:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds;

(2) Complete, current and accessible financial records which fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project.

(3) All records specified in Office of Management and Budget Circulars A-102 (for State and local governments) and A-110 (educational institutions, hospitals and nonprofit organizations).

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

§ 2301.26 Copies of planning studies; Final certification of construction projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any study conducted in whole or in part with funds provided under this program by sending the copies to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has completed the acquisition and installation of the project equipment in accordance with the project as approved by the Agency and has complied with all terms and conditions of the grant as specified in § 2301.5;

(2) Certify that the grantee has obtained any necessary Commission authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same.

(3) Certify that the facilities have been acquired, are in operating order and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency and document same; and

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty and provide the Agency with a copy of their insurance policy.

(Approved by the Office of Management and Budget under OMB Control No. 0660-0001)

§ 2301.27 Annual status report for construction projects.

For construction projects, the grantee must file with the Agency during the ten (10) year period commencing with the date of completion of a project, an annual status report on or before each April 1 following completion of the project. In the annual report, the grantee must:

(a) Specifically address the conditions attached to the grant as specified in § 2301.28;

(b) Report any changes from the date of completion of the project or date of previous annual report in the manner of compliance with § 2301.28;

(c) Certify that the grantee continues to meet the conditions attached to the grant as specified in § 2301.28.

(Approved by the Office of Management and Budget under OMB Control No. 0660-0001)

Subpart F—Control and Use of Facilities

§ 2301.28 What conditions are attached to the Federal grant?

When an applicant is awarded a Federal grant under the PTFP, the applicant (now the grantee) takes the grant subject to certain conditions concerning the use of the Federal monies and the equipment obtained with those monies. These conditions are:

(a) In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the period of Federal interest, all grantees shall:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located.

(2) A certified copy of the recorded lien shall be filed with the Administrator ninety days after the grant award is received.

(3) The continuing period of Federal interest shall be no less than 10 years from the date of completion of the project.

(b) During the construction of a project and the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.4 above;

(2) Obtain and continue to hold any necessary Commission authorization(s);

(3) Use the Federal grant funds for which the grant was made and for the items of apparatus and other expendi-

ture items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Agency in writing;

(4) Use the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public of any advertisement, except as permitted by law or as authorized by the Commission;

(6) Hold appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure continuity of operation of the facility;

(7) Maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project, if they receive express written approval for this different policy from the Director. In addition, each grantee must send a copy of their current insurance coverage with each Annual Report;

(8) Within 30 calendar days of the award date, the recipient shall submit, in triplicate to the Public Telecommunications Facilities Program, a construction schedule or a revised planning timetable which will include the information requested in the grant terms and conditions in the award package;

(9) Comply with the provision of the Office of Management and Budget Circulars A-102 (for state and local governments) and A-110 (for institutions of higher education, hospitals and other nonprofit organizations) for the procurement of equipment and services funded in whole or in part with Federal monies;

(10) Interest earned on advances of Federal funds shall be remitted to the Agency except for interest earned on advances of states or instrumentalities of a state as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638);

(11) In advertising for bids for the purchase of apparatus, the grantee shall state the Federal Government has an interest in facilities purchased with Federal funds under this program which begins with the purchase of the facilities and continues for ten (10) years after the completion of the project;

(12) In complying with the financial and performance reporting requirements of Attachments H and I of Office of Management and Budget Circular A-110 and the grant terms and conditions, the grantee shall submit performance reports and the required financial reports on a calendar year quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period;

(13) Promptly complete the project and place the public telecommunications facility into operation;

(14) Permit inspections during normal working hours by the Agency and the Comptroller General of the United States or their duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance or of any books, documents, papers, and records relating to those facilities;

(15) Ensure that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (Title VI of the Civil Rights Act of 1964 as implemented by

Department regulations 15 CFR Subtitle A, Part 8);

(16) Ensure that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any educational program or activity for which the applicant receives funding under the Act (Title IX of the Education Amendment of 1972, as amended);

(17) Ensure that no otherwise qualified individual shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits of or be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (section 504 of the Rehabilitation Act of 1973, as amended);

(18) The Agnecy will allow the acquisition of facilities by lease; however, there are several provisions which must be followed:

(i) The lease must be for a term of years not greater than the useful life of the equipment.

(ii) The cost of the lease must not be more than the total of the non-Federal share of the matching funds.

(iii) The actual amount of the lease must not be more than the outright purchase price would be.

(iv) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal Government through the Agency has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(19) During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.

§ 2301.29 Nondiscrimination; Rules incorporated by reference.

(a) The Agency shall enforce Title VI of the Civil Rights Act of 1964, as implemented by Department regulations, 15 CFR Subtitle A, Part 8, which is hereby incorporated in this part by reference.

(b) The Agency shall enforce Title IX of the Education Amendments of 1972, as amended. Department implementing regulations have not yet been adopted, but will be incorporated by reference in this part upon their adoption.

(c) The Agency shall enforce section 504 of the Rehabilitation Act of 1973, as amended. Department implementing regulations have been proposed, 43 FR 53765, published November 17, 1978. Final regulations will be incorporated by reference in this part.

(d) The Agency shall enforce the Age Discrimination Act of 1975, as amended. Department implementing regulations have not yet been adopted, but will be incorporated by reference upon their adoption.

§ 2301.30 How can a grant be terminated?

(a) *Termination for cause.* If a grantee fails to meet any condition attached to the grant, as specified in § 2301.28 of this Part, the Agency may take any appropriate action including, but not limited to:

(1) Suspending a particular grant and withholding further payments under that grant, pending corrective action by the grantee;

(2) Prohibiting a grantee from incurring additional obligations of funds, pending corrective action by the grantee;

(3) Where the grantee cannot (or will not) comply with the condition (or conditions) attached to a particular grant, terminating the grant and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grant bore to the project;

(4) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, suspending payments under all these other grants;

(5) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, terminating all these other grants and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the

fair market value of the facilities at the time of termination as the Federal grants bore to the projects for which they were granted.

(b) *Termination for convenience.* When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with all the conditions and on an effective date to which the parties have mutually agreed in writing.

(c) *Termination by transfer.* When the Agency and grantee agree in writing the grant may be terminated by transferring the Federal interest in PTFP funded equipment to other eligible equipment presently owned or to be purchased by a grantee with non-Federal monies.

(1) Equipment previously funded by PTFP which is within the Federal interest period, may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(2) Equipment is not transferrable until after the third anniversary of the PTFP certified date of completion of the funded project.

(3) The same item can be used only once to substitute for the Federal interest; however, it may be used to cover equipment transferred from one or more grants if the request for each is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest must be recorded in accordance with 15 CFR 2301.28 of the PTFP Regulations. A copy of the lien document must be filed with the PTFP within 60 days of the date of approval of the transfer of Federal interest.

(5) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in that equipment must be at least equal to the Federal interest in the original equipment.

(d) *Termination by buy-out.* A grantee may terminate the PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

(e) Procedures for transfer or buy-out—

(1) Grantees requesting a transfer or buy-out of PTFP funded equipment must submit such requests on a form provided by the Agency. (OMB Control No. 0660-0003)

(2) In either case, the amount of the Federal interest must be determined by negotiation between PTFP and the grantee and agreed upon by the Director.

§ 2301.31 Equipment.

All equipment, which a grantee acquires under this program, shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment which is compatible with broadcast equipment wherever the two types of apparatus interface.

§ 2301.32 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

APPENDIX A TO PART 2301

Priority I—*Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.* Within this category, we establish two subcategories:

A. *Projects which include local origination capacity.* This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This category includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under priority IB, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—*Replacement of Basic Equipment of Existing Essential Broadcast Facilities.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the facility is the only public telecommunications facility providing a signal to a geographical area or the only facility with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential facilities. Where an applicant seeks to "improve" basic equipment in its facility (i.e., where the equipment is not "worn out"), or where the applicant is not an essential facility, NTIA would consider the applicant's project under Priority IV.

Priority III—*Establishment of First Local Origination Capacity in a Geographical Area.* Projects in this category include the planning or construction of facilities to bring the first local origination on capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—*Replacement and Improvement of Basic Equipment for Existing Broadcast Facilities.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the quipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs.)

Priority V—*Augmentation of Existing Broadcast Station Facilities.* Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or either to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases. In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose application, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., service to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of CFR Titles and Chapters

(As of December 13, 1985)

Title 1—General Provisions

Chap.	
I	Administrative Committee of the Federal Register (Parts 1-49)
II	Office of the Federal Register (Parts 50-299)
III	Administrative Conference of the United States (Parts 300-399)
IV	Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

	Proclamations
	Executive Orders
	Other Presidential Documents
I	Executive Office of the President (Parts 100-199)

Title 4—Accounts

I	General Accounting Office (Parts 1-99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III	General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1-1199)
II	Merit Systems Protection Board (Parts 1200-1299)
III	Office of Management and Budget (Parts 1300-1399)
IV	Advisory Committee on Federal Pay (Parts 1400-1499)
V	The International Organizations Employees Loyalty Board (Parts 1500-1599)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX	Appalachian Regional Commission (Parts 1900-1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500-2599)

Title 6—[Reserved]

Title 7—Agriculture

	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210-299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
V	Agricultural Research Service, Department of Agriculture (Parts 500-599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600-699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200-2299)
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

Title 7—Agriculture—Continued

Chap.	
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600-2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700-2799)
XXIX	Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX	Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200-3299)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400-3499)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200-299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0-199)
II	Department of Energy (Parts 200-699)
III	Department of Energy (Parts 700-999)
X	Department of Energy (General Provisions) (Parts 1000-1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1-199)
II	Federal Reserve System (Parts 200-299)
III	Federal Deposit Insurance Corporation (Parts 300-399)
IV	Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.	
V	Federal Home Loan Bank Board (Parts 500-599)
VI	Farm Credit Administration (Parts 600-699)
VII	National Credit Union Administration (Parts 700-799)
VIII	Federal Financing Bank (Parts 800-899)
XI	Federal Financial Institutions Examination Council (Parts 1100-1199)
XII	Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1-199)
III	Economic Development Administration, Department of Commerce (Parts 300-399)
V	Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1-199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-399)
V	National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

	SUBTITLE A—Office of the Secretary of Commerce (Parts 0-29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30-199)
II	National Bureau of Standards, Department of Commerce (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)
IV	Foreign-Trade Zones Board (Parts 400-499)
VI	Bureau of Industrial Economics, Department of Commerce (Parts 600-699)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
XII	United States Travel Service, Department of Commerce (Parts 1200-1299)
XIII	East-West Foreign Trade Board (Parts 1300-1399)
XIV	Minority Business Development Agency (Parts 1400-1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000-2099)

Title 15—Commerce and Foreign Trade—Continued

Chap.	
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0-999)
II	Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1-199)
II	Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
III	Delaware River Basin Commission (Parts 400-499)
VI	Water Resources Council (Parts 700-799)
VIII	Susquehanna River Basin Commission (Parts 800-899)
XIII	Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1-199)
II	United States International Trade Commission (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
II	Railroad Retirement Board (Parts 200-399)
III	Social Security Administration, Department of Health and Human Services (Parts 400-499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
V	Employment and Training Administration, Department of Labor (Parts 600-699)
VI	Employment Standards Administration, Department of Labor (Parts 700-799)
VII	Benefits Review Board, Department of Labor (Parts 800-899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

Chap.	
I	Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I	Department of State (Parts 1-199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200-299)
III	Peace Corps (Parts 300-399)
IV	International Joint Commission, United States and Canada (Parts 400-499)
V	United States Information Agency (Parts 500-599)
VI	United States Arms Control and Disarmament Agency (Parts 600-699)
VII	Overseas Private Investment Corporation (Parts 700-799)
IX	Foreign Service Grievance Board Regulations (Parts 900-999)
X	Inter-American Foundation (Parts 1000-1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
XII	United States International Development Cooperation Agency (Parts 1200-1299)
XIII	Board for International Broadcasting (Parts 1300-1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)
XV	African Development Foundation (Parts 1500-1599)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1-999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)
III	National Highway Traffic Safety Administration, Department of Transportation (Parts 1300-1399)

Title 24—Housing and Urban Development

	SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)
	SUBTITLE B—Regulations Relating to Housing and Urban Development
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
II	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)

Title 24—Housing and Urban Development—Continued

Chap.	
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
VII	Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700-799)
VIII	Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800-899)
IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900-999)
X	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700-1799)
XI	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
XII	Office of Inspector General, Department of Housing and Urban Development (Parts 2000-2099)
XV	Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
XX	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

Chap.	
I	Department of Justice (Parts 0-199)
III	Federal Prison Industries Inc., Department of Justice (Parts 300-399)
V	Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

	SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)
	SUBTITLE B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100-199)
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200-299)
III	National Railroad Adjustment Board (Parts 300-399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400-499)
V	Wage and Hour Division, Department of Labor (Parts 500-899)
IX	Construction Industry Collective Bargaining Commission (Parts 900-999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)
XX	Occupational Safety and Health Review Commission (Parts 2200-2499)
XXV	Office of Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600-2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1-199)
II	Minerals Management Service, Department of the Interior (Parts 200-299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
IV	Geological Survey, Department of the Interior (Parts 400-499)
VI	Bureau of Mines, Department of the Interior (Parts 600-699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)
	SUBTITLE B—Regulations Relating to Money and Finance

Title 31—Money and Finance: Treasury—Continued

Chap.	
I	Monetary Offices, Department of the Treasury (Parts 51-199)
II	Fiscal Service, Department of the Treasury (Parts 200-399)
IV	Secret Service, Department of the Treasury (Parts 400-499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1-399)
V	Department of the Army (Parts 400-699)
VI	Department of the Navy (Parts 700-799)
VII	Department of the Air Force (Parts 800-1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900-1999)
XX	Information Security Oversight Office (Parts 2000-2099)
XXI	National Security Council (Parts 2100-2199)
XXIV	Office of Science and Technology Policy (Parts 2400-2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700-2799)
XXVIII	Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Corps of Engineers, Department of the Army (Parts 200-399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100-199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400-499)

Title 34—Education—Continued

Chap.	
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
VI	Office of Postsecondary Education, Department of Education (Parts 600-699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700-799)

Title 35—Panama Canal

I	Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1-199)
II	Forest Service, Department of Agriculture (Parts 200-299)
III	Corps of Engineers, Department of the Army (Parts 300-399)
IV	American Battle Monuments Commission (Parts 400-499)
V	Smithsonian Institution (Parts 500-599)
VII	Library of Congress (Parts 700-799)
VIII	Advisory Council on Historic Preservation (Parts 800-899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
X	Commission of Fine Arts (Parts 1000-1099)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)
XII	National Archives and Records Administration (Parts 1200-1299)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1-199)
II	Copyright Office, Library of Congress (Parts 200-299)
III	Copyright Royalty Tribunal (Parts 300-399)
IV	Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce (Parts 400-499)

Title 38—Pensions, Bonuses, and Veterans' Relief

I	Veterans Administration (Parts 0-99)

Title 39—Postal Service

I	United States Postal Service (Parts 1-999)
III	Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I	Environmental Protection Agency (Parts 1-799)
V	Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

Chap.	
	SUBTITLE B—Other Provisions Relating to Public Contracts
50	Public Contracts, Department of Labor (Parts 50-1—50-999)
51	Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management [Reserved]
	SUBTITLE E—Federal Information Resources Management Regulations System
201	Federal Information Resources Management Regulations (Parts 201-1—201-99)

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1-199)
III	Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200-499)
II	Bureau of Land Management, Department of the Interior (Parts 1000-9999)

Title 44—Emergency Management and Assistance

I	Federal Emergency Management Agency (Parts 0-399)
IV	Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

Chap.	
	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
IV	Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400-499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
VI	National Science Foundation (Parts 600-699)
VII	Commission on Civil Rights (Parts 700-799)
VIII	Office of Personnel Management (Parts 800-899)
X	Office of Community Services, Department of Health and Human Services (Parts 1000-1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100-1199)
XII	ACTION (Parts 1200-1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
XVI	Legal Services Corporation (Parts 1600-1699)
XVII	National Commission on Libraries and Information Science (Parts 1700-1799)
XVIII	Harry S Truman Scholarship Foundation (Parts 1800-1899)
XXI	Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Maritime Administration, Department of Transportation (Parts 200-399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
IV	Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0-199)
II	Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1-99)
2	Department of Defense (Parts 200-299)
3	Department of Health and Human Services (Parts 300-399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

4 Department of Agriculture (Parts 400-499)

5 General Services Administration (Parts 500-599)

7 Agency for International Development (Parts 700-799)

8 Veterans Administration (Parts 800-899)

9 Department of Energy (Parts 900-999)

10 Department of the Treasury Acquisition/Procurement Regulation (Parts 1000-1099)

12 Department of Transportation (Parts 1200-1299)

13 Department of Commerce (Parts 1300-1399)

14 Department of the Interior (Parts 1400-1499)

15 Environmental Protection Agency (Parts 1500-1599)

18 National Aeronautics and Space Administration (Parts 1800-1899)

19 United States Information Agency (Parts 1900-1999)

22 Small Business Administration (Parts 2200-2299)

24 Department of Housing and Urban Development (Parts 2400-2499)

25 National Science Foundation (Parts 2500-2599)

28 Department of Justice (Parts 2800-2899)

29 Department of Labor (Parts 2900-2999)

44 Federal Emergency Management Agency (Parts 4400-4499)

61 General Services Administration Board of Contract Appeals (Parts 6100-6199)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100-199)

II Federal Railroad Administration, Department of Transportation (Parts 200-299)

III Federal Highway Administration, Department of Transportation (Parts 300-399)

IV Coast Guard, Department of Transportation (Parts 400-499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)

VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700-799)

VIII National Transportation Safety Board (Parts 800-899)

IX United States Railway Association (Parts 900-999)

X Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

Chap.	
I	United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
V	Marine Mammal Commission (Parts 500-599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(As of December 13, 1985)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
Operations and Finance, Office of	7, XXX
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI

Agency	CFR Title, Subtitle or Chapter
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII

Agency	CFR Title, Subtitle or Chapter
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Home Loan Mortgage Corporation	1, IV
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I

Agency	CFR Title, Subtitle or Chapter
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, IV
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I

Agency	CFR Title, Subtitle or Chapter
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquistion Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50

Agency	CFR Title, Subtitle or Chapter
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III

Agency	CFR Title, Subtitle or Chapter
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A

Agency	CFR Title, Subtitle or Chapter
United States Customs Service	19, I
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes affected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972" published in three separate volumes.

1973

15 CFR

	38 FR Page
Chapter IX	
920 Added	33045
Chapter X	
Chapter revised	26676
1000 Interpretative analyses and statements	25909
Revised	26676
1000.203 (d)(2) revised	16637
1000.306 (e)(1) and (3) revised	16637
1000.312 (e) added	11
(c)(4) and 12 revised; (c)(13) and (14) added; (e) removed	12912
(c)(1) revised	16637
1000.313 (f) added	11
(b) revised; (e)(4) added; (f) removed	12913
1000.501 (c) added	35453
1000.502 Revised	16638
1000.503 (a) revised	16638
Revised	33486
1000.504 (b) revised	33487
1000.505 (a)(7) added	12913
1000.506 (a)(4) and (c) revised	16638
1000.507 Removed	16638
1000.508 Heading added	35453
1000.509 Added	35453
1000.601 Revised	16638
1000.602 (b)(3), (4), and (5) and (e) revised	16638
1000.905 (b)(2) (iii) removed	16638
1000.906 (b)(3) (iii) and (iv) removed	16638
1000.1003 (c)(1) and (2) and (d) revised; (c)(5) removed	16639
1000.1302 (a) revised	33487

15 CFR—Continued

	38 FR Page
Chapter X—Continued	
1020 Revised	26697
1025 Revised	26699
1030 Revised	26699
1035 Revised	26703
1040 Revised	26704
1050 Revised	26705

1974

15 CFR

	39 FR Page
Chapter VI	
601 Removed	7579
615 Removed (provisions transferred to Part 315)	2081
667 Removed	13763
Chapter VIII	
Chapter heading revised	44441
Chapter IX	
903 Revised	6059
908.4 (a)(7) amended; (a)(8) redesignated as (a)(9); new (a)(8) added	1832
908.12 (d) added	1833
921 Added	19924
921.14 Added	45214
922 Added	23255
923 Added	11999
950 Added	13626
950.3 Amended	20193
Chapter X	
Chapter heading revised	30481
1000 Removed	30481
1000.201 (a) removed; (b)(1) revised	4872

15 CFR—Continued

	39 FR Page
Chapter X—Continued	
1000.203 (c) removed	4872
1000.501 (a) amended; (c) removed	4872
1020 Authority citation revised	30481
1025 Authority citation revised	30481
1030 Authority citation revised	30481
1030.472 (b) revised	30481
1035 Authority citation revised	30481
1040 Authority citation revised	30481
1050 Authority citation revised	30481

1975

15 CFR

	40 FR Page
Chapter V	
Chapter removed	14931
500 Removed (provisions recodified under Part 350)	14930
Chapter VII	
Chapter removed	12254
701 Redesignated as Part 301	12254
Chapter VIII	
803.1 (b) revised	21705
803.2 (a)(2) amended	21705
803.4 (a)(1) and (b)(1) revised	21705
803.5 (g) revised	21706
804 Added	5004
Chapter IX	
903 Revised	41999
920.40 Revised	16833
920.45—920.49 Revised	16833
923 Added	1684
Prior 923 (39 FR 11999) redesignated as 926	4648
924 Interim regulations added	5349
Revised	21706
925 Interim regulations added	8546
Time extended	19194
926 Redesignated from prior Part 923	4648
Revised	11863
927—928 Added	23275
950 Revised	56653
Chapter XI	
Established	20070
Removed	44809
1160 Added	20070
Removed	44809

15 CFR—Continued

	40 FR Page
Chapter XII	
1202 Added	34107
Chapter XIII	
Chapter established	29534
1300 Added	29534
Chapter XX	
Appendix A added	18422
2001 Revised	18419
2001.3 (a)(13) revised	39497
2002 Revised	18420
2002.1 (b)(4) redesignated as (b)(5); new (b)(4) added	39497
(a) amended	60042
2002.2 (b)(5) removed	39497
(a) amended; (b) (8) and (9) redesignated (9) and (10); new (b)(8) added	60042
2002.3 Redesignated as 2002.4; new 2002.3 added	39497
2002.4 Redesignated from 2002.3 and amended	39497
2003 Revised	18421
2003.1 (b) removed; (c) redesignated as new (b)	39498
(b) redesignated (c); new (b) added	60042
2003.2 (e) revised	39498
2003.3 Removed	39498
2003.4 (a) amended	39498
2004 Added	30934
2005 Added	48331
2006 Added	39498
2007 Added	60042

1976

15 CFR

	41 FR Page
Chapter VIII	
803 Revised	23606
805 Added	23392
Chapter IX	
905 Added	18069
Revised	34017
908 Revised	23394
916 Added	41408
923.43 (c) added	48113
929 Added	2379
Chapter X	
Chapter removed	50807
1020 Removed	50807
1025 Removed	50807
1030 Removed	50807
1035 Removed	50807

15 CFR—Continued

41 FR Page

Chapter X—Continued

1040 Removed............50807
1050 Removed............50807

Chapter XX

2002.1 (b)(6) added............9307
2006.3 Redesignated from 2006.4............9307
2006.4 Redesignated as 2006.3; new 2006.4 added............9307
(b) corrected............12299

1977

15 CFR

42 FR Page

Chapter VIII

803 Revised............64314
806 Added............64315
807 Added............38574

Chapter IX

920 Revised............22036
931 Added............1164
932 Added............19854
933 Added............38738
950 Revised............25852

Chapter XX

2002.1 (b)(4) and (6) redesignated as (b)(8) and (9)............55611
2002.2 (b)(8) and (9) redesignated as (b)(8) and (9) redesignated as (b)(10) and (11)............55611
2002.3 (a), (b)(3) and (4) amended............55611
2006.0 (b) and (c) amended............55611
2006.4 (a) amended............55611
2006.5 (a) amended............55611
2007 Revised............45532

1978

15 CFR

43 FR Page

Chapter VIII

806.7 (n) revised............54624
806.11 (b) and (c) revised............54624
806.14 (b) and (g)(1)(iii) corrected............2169
806.15 (d)(2) corrected............2169
(f) revised............54624

Chapter IX

904 Added............17811
909 Added............36240
917 Added............15307
917.21 (c)(2) through (15) added............35030
923 Revised; interim............8395

15 CFR—Continued

43 FR Page

Chapter IX—Continued

Comment time extended............29106
930 Added............10517
930.19 Heading correctly added............15416
930.20 Heading correctly added............15416
930.30 Subpart heading correctly added............15416
930.32 (a) corrected............15416
931 Added; final regulations............7550
931.82 (b) amended............32743

1979

15 CFR

44 FR Page

Chapter V

Chapter established............4463
500 Added............4463
501 Added............32651
502 Added............29039
806 (g)(2) removed; (g)(3) redesignated as (g)(2); new (g)(3) and (4) added............32586

Chapter IX

918 Added............75054
922 Revised............44837
Effective date corrected............46266
923 Revised............18595
930 Revised............37143
930.70 Amended............3705
930.71 Nomenclature change............3706
930.72 Nomenclature change............3706
930.73 Nomenclature change............3706
930.76 Nomenclature changed; (b) revised............3706
930.79 Revised............3705
(a) amended............3706
930.83 Nomenclature change............3706
930.86 (c) and (d) amended............3706
931 Revised............29584
931.125 (c)(3), (4), and (5) corrected............31011
931.126 Corrected............31011
950 Revised............54468

Chapter XX

2004.3 Removed............55329
2008 Added............55329

Subtitle D

Subtitle established............30912
Technical correction............31629

Chapter XXIII

Chapter established............30912
Technical correction............31629

15 CFR—Continued

44 FR Page

Chapter XXIII—Continued

2301 Added....................................30913

Technical correction.................. 31629

1980

15 CFR

45 FR Page

Chapter V

502.203 Correctly designated as 502.303.......................................29271

502.303 Correctly designated from 502.203.............................. 29271

502.502 (a)(3) amended................ 29271

502.1201—502.1202 (Subpart L) Added.. 29271

502.1301—502.1310 (Subpart M) Added.. 29272

503 Added......................................29273

504 Added......................................61554

Chapter VI

Chapter established........................42214

615 Added; regulations transfered from Part 315.................42214

Chapter IX

911 Revised.................................... 43701

931.45 Corrected........................... 78118

931.75 (a) corrected........................78118

931.140—931.152 (Subpart L) Added.. 4309

935 Added......................................65203

970 Added; interim........................76662

Chapter XX

Chapter XX Heading revised and nomenclature change.............. 12214

2006 Revised.......... 34871

Chapter XXII

2301 Filing time extended............. 7780

Policy statement.......................... 69430

2301.4 (c)(4) added.......................... 1991

2301.33 (a) amended...................... 1991

(b) revised.....................................8582

2301.37 Revised.............................. 8583

1981

15 CFR

46 FR Page

Chapter V

503.2 Revised................................. 15496

503.8 (e) amended......................... 15496

503.18 (b)(4) amended.................. 15496

503.22 Heading amended............ 15496

Chapter VIII

804—805 Removed........................ 16892

15 CFR—Continued

46 FR Page

Chapter VIII—Continued

806.7 (a) revised............................23226

806.8 Revised................................. 23226

806.14 (b) introductory text revised; (e) (1), (2), and (3) amended; (f) (1) and (4) removed; (f) (2) and (3) redesignated as (f) (1) and (2)............ 23226

806.15 (a)(6) added; (b) through (g) redesignated as (e) through (j); new (b), (c), and (d) added; new (f) and (h)(1) revised; new (g) introductory text, (i)(1), (j)(3), (i)(B) and (ii)(C), and (4) amended; new (h)(2) removed; (h)(3) redesignated as (h)(2)........................23226

(j)(5) added..................................... 60191

806.17 Revised............................... 30336

Chapter IX

904 Heading revised; interim.......61644

904.1—904.5 Redesignated as 904.600—904.604 (Subpart G); interim...61644

904.100—904.107 (Subpart B) Added; interim.......................... 61644

904.200—904.272 (Subpart C) Added; interim.......................... 61646

904.600—904.604 (Subpart G) Redesignated from 904.1—904.5; interim.............................61644

908 Authority citation................. 32233

908.1 (g) removed; (h) through (l) redesignated as (g) through (k).............................32233

908.5 (b)(3) removed; (b) (4) and (5) redesignated as (b) (3) and (4)..32233

908.6 (d) removed; (e) through (g) redesignated as (d) through (f)...............................32233

911 Revised.................................... 48635

922.31—922.33 Removed; interim... 61652

930.32 Redesignated as 930.34; new 930.32 added...................... 35257

Effective date suspended............50938

930.33 Redesignated as 930.35; new 930.33 added...................... 35257

Effective date suspended............50938

930.34 Redesignated as 930.36; new 930.34 redesignated from 930.32..35257

Effective date suspended............50938

15 CFR—Continued

46 FR Page

Chapter IX—Continued

930.35 Redesignated as 930.37; new 930.35 redesignated from 930.33.....35257
  Effective date suspended.....50938
930.36 Redesignated as 930.38; new 930.36 redesignated from 930.34 and (b) amended.....35257
  Effective date suspended.....50938
930.37 Redesignated as 930.39; new 930.37 redesignated from 930.35 and (e) added.....35257
  Effective date suspended.....50938
930.38 Redesignated as 930.40; new 930.38 redesignated from 930.36.....35257
  Effective date suspended.....50938
930.39 Redesignated as 930.41; new 930.39 redesignated from 930.37 and (b) amended.....35257
  Effective date suspended.....50938
930.40 Redesignated as 930.42; new 930.40 redesignated from 930.38 and (a) amended.....35257
  Effective date suspended.....50938
930.41 Redesignated as 930.43; new 930.41 redesignated from 930.39 and (a) and (b) amended.....35257
  Effective date suspended.....50938
930.42 Redesignated as 930.44; new 930.42 redesignated from 930.40.....35257
  Effective date suspended.....50938
930.43 Redesignated as 930.45; new 930.43 redesignated from 930.41.....35257
  Effective date suspended.....50938
930.44 Redesignated as 930.46; new 930.44 redesignated from 930.42.....35257
  Effective date suspended.....50938
930.45 Redesignated from 930.43.....35257
  Effective date suspended.....50938
930.46 Redesignated from 930.44.....35257
  Effective date suspended.....50938
935 Effective date deferred.....14741
  Effective date confirmed (except 935.6 and 935.7).....19227
935.6 Effective date deferred to 4-30-81 and request for comments.....19227
  Effective date deferred to 9-30-81 and request for comments.....23924

15 CFR—Continued

46 FR Page

Chapter IX—Continued

  Effective date deferred to 9-30-81 and comment time extended.....32014
  Effective date deferred to 3-30-82.....47770
935.7 Effective date deferred to 4-30-81 and request for comments.....19227
  Effective date deferred to 9-30-81 and request for comments.....23924
  Effective date deferred to 9-30-81 and comment time extended.....32014
  Effective date deferred to 3-30-82.....47770
936 Added (effective pending congressional review).....7939
  Technical correction.....9567
  Effective date deferred.....14741
  Effective date confirmed (except 936.6).....19227
936.6 Effective date deferred to 4-30-81 and request for comments.....19227
  Effective date deferred to 9-30-81 and request for comments.....23924
  Effective date deferred to 9-30-81 and comment time extended.....32014
  Effective date deferred to 3-30-82.....47770
937 Added (effective pending congressional review).....7949
  Effective date deferred.....14741
  Effective date confirmed.....21357
938 Added (effective pending congressional review).....7944
  Technical correction.....10141
  Effective date deferred.....14741
  Effective date confirmed.....21357
970 Heading corrected.....45895, 50937, 63243
970.100—970.103 (Subpart A) Added.....45896
970.200—970.213 (Subpart B) Added.....45898
970 (Subpart C) Heading added.....45902
970.400—970.408 (Subpart D) Added.....45902
970.500—970.524 (Subpart E) Added.....45903

15 CFR—Continued

46 FR Page

Chapter IX—Continued

970.600—970.603 (Subpart F) Added......45907
970.700—970.702 (Subpart G) Added......45908
970.800—970.801 (Subpart H) Added......45909
970.900—970.906 (Subpart I) Added......45909
970.1000—970.1002 (Subpart J) Added......45911
970.1100—970.1107 (Subpart K) Added......45915
970.1101 Revised; interim......61652
970.1102 Revised; interim......61652
970.1103 (g) revised; interim......61652
981 Added......39394
981.260 Technical guidance document......48637
981.590 Revised; interim......61652
981.600 Revised; interim......61652

Chapter XII

1202 Redesignated as Part 310 and nomenclature change......57457

1982

15 CFR

47 FR Page

Chapter VIII

806.14 (e) revised......13139
  Technical correction......15579
806.15 (i), (j)(3), and (j)(4) second undesignated paragraph revised; (j)(4)(A) and (B) redesignated as (j)(4)(i) and (ii)......13139
  (j)(4) correctly designated......14138
  Technical correction......15579
  (i) revised......23705

Chapter IX

904 Heading corrected......10200
904.100—904.107 (Subpart B) Authority citation corrected......19990, 54429
904.100 (a)(1)(iv) corrected......19990
  (a)(1)(ix) corrected......54429
904.200—904.272 (Subpart C) Authority citation corrected......19990, 54429
904.600—904.604 (Subpart G) Suspended; interim......9820
  Removed; eff 1-14-83......56133
923.82 (b)(3) amended (effective date pending)......21024

15 CFR—Continued

47 FR Page

Chapter IX—Continued

  (b)(3) amendment effective 8-7-82......34981
923.85 Removed (effective date pending)......21019
  Removal effective 8-7-82......34981
923.101—923.105 (Subpart K) Added (effective date pending)......21019
  Addition effective 8-7-82......34981
927 Revised (effective date pending)......21021
  Revision effective 8-7-82......34981
928 Revised (effective date pending)......21021
  Revision effective 8-7-82......34981
929 Revised......39475
  Revision withdrawn......44543
930 Technical correction and part number designation corrected......27062
930.32 Redesignation and addition removed (effective date pending)......4231
  Redesignation and addition removal effective date confirmed......20110
930.33 Redesignation and addition removed (effective date pending)......4231
  Redesignation and addition removal effective date confirmed......20110
930.34 Redesignation removed (effective date pending)......4231
  Redesignation removal effective date confirmed......20110
930.35 Redesignation removed (effective date pending)......4231
  Redesignation removal effective date confirmed......20110
930.36 Redesignation and amendment removed (effective date pending)......4231
  Redesignation and amendment removal effective date confirmed......20110
930.37 Redesignation and (e) addition removed (effective date pending)......4231
  Redesignation and (e) addition removal effective date confirmed......20110
930.38 Redesignation removed (effective date pending)......4231

15 CFR—Continued

47 FR Page

Chapter IX—Continued

Redesignation removal effective date confirmed..........20110

930.39 Redesignation and (b) amendment removed (effective date pending)..........4231

Redesignation and (b) amendment removal effective date confirmed..........20110

930.40 Redesignation and (a) amendment removed (effective date pending)..........4231

Redesignation and (a) amendment removal effective date confirmed..........20110

930.41 Redesignation and (a) and (b) amendment removed (effective date pending)..........4231

Redesignation and (a) and (b) amendment removal effective date confirmed..........20110

930.42 Redesignation removed (effective date pending)..........4231

Redesignation removal effective date confirmed..........20110

930.43 Redesignation removed (effective date pending)..........4231

Redesignation removal effective date confirmed..........20110

930.44 Redesignation removed (effective date pending)..........4231

Redesignation removal effective date confirmed..........20110

930.45 Redesignation removed (effective date pending)..........4231

Redesignation removal effective date confirmed..........20110

930.46 Redesignation removed (effective date pending)..........4231

Redesignation removal effective date confirmed..........20110

931.30—931.37 (Subpart D) Revised (effective date pending)..........21024

Revision effective 8-7-82..........34981

931.70 Revised (effective date pending)..........21025

Revision effective 8-7-82..........34981

931.71 Introductory text revised; (d) added (effective date pending)..........21025

Introductory text revision; (d) addition; effective 8-7-82..........34981

931.73 (a) amended (effective date pending)..........21025

(a) amendment effective 8-7-82..........34981

15 CFR—Continued

47 FR Page

Chapter IX—Continued

931.74 (a) amended; (d) added (effective date pending)..........21026

(a) amendment; (d) addition; effective 8-7-82..........34981

931.140—931.152 (Subpart L) Correctly removed..........21024, 21759

935.6 Effective date of 3-30-82 confirmed..........18588

935.7 Effective date of 3-30-82 confirmed..........18588

935 Appendix I.A. correctly revised..........5212

936.6 Effective date of 3-30-82 confirmed..........18588

936 Appendix I correctly revised..........5212

970.100 (c)(1) corrected..........5966

970.101 (m) revised..........5967

970.200 (b) amended..........5968

970.208 (b) corrected..........5966

(b) amended..........5968

970.209 (c) amended..........11513

970.210 Corrected..........5966

970.211 (a) amended..........11513

970.300 (Subpart C) Added..........3763

(b)(5) suspended..........11513

(b)(5) suspension removed..........24948

970.300—970.304 (Subpart C) Revised..........5968, 24948

970.301 (b) and (g) suspended..........8171

(b) and (g) suspension removed; (b) and (g) amended..........11513

970.302 (b) suspended..........8171

Suspended..........11513

Suspension removed..........24948

970.303 Suspended..........11513

Suspension removed..........24948

970.512 (a)(1) and (b) corrected..........5966

970.601 (d) revised; (e) added..........5968

970.1002 (f) corrected..........5966

970.2401 (a), (b), (c), (e), (f), and (g) correctly removed; (d) redesignated as (a)..........5966

970.2602 Removed..........5966

981.210 (b) corrected..........31861

981.580 (b)(2) corrected..........31861

Chapter XX

2009 Added..........50207

2011 Added; interim..........34779

Chapter XXIII

2301 Revised; interim..........11232

Revised final..........53655

1983

15 CFR

48 FR Page

Chapter V
Chapter V Removed 9849
500—504 Removed 9849

Chapter VIII
802 Authority citation 56944
802.5 Added 56944
803 Authority citation 56944
803.7 Added 56944
806 Authority citation 56944
806.14 (a)(2) revised 8993
806.16 Revised 8994
806.18 Added 56944

Chapter IX
902 Added 55840
903.1 (b) revised 20688
(b)(10) corrected 24039
903.5 (c) revised 20689
903.7 (b) and (c) revised 20689
903.8 (a)(3) revised 20689
903.9 (b) and (g) revised 20689
903.10 (c)(4)(iii) revised 20689
903.11 Revised 20689
905 Removed 29136
909.2 (b) and (c) revised 17064
920.53 (b) amended 29136
920.55 (b) amended 29136
920.58 (a) amended 29136
920.59 (a) amended 29136
920.61 (d) and (f) amended 29136
921.14 (c) amended 29136
922 Revised 24301
923.92 (b)(3) amended 29136
923.95 (a) and (b) amended 29136
923.98 (c) amended 29136
929 Revised; eff. 1-9-84 55118
930.35 (b) amended 29136
930.54 (a) amended 29136
930.61 (c)(3) amended 29136
930.93 Revised 29136
930.94 Redesignated as 930.95 and (a) and (c) amended; new 930.94 redesignated from 930.95 and revised 29136
930.95 Redesignated as 930.94 and revised; new 930.95 redesignated from 930.94 and (a) and (c) amended 29137
930.96 (a) and (b) amended 29137
930.98 (a) amended 29137
931.36 (b)(2) removed; (b)(3) and (4) redesignated as (b) (2) and (3) 29137
931.50 (c)(4) removed 29137

15 CFR—Continued

48 FR Page

Chapter IX—Continued
931.77 (c)(4)(v) and (5) removed 29137
931.91 Amended 29137
931.92 Removed 29137
932.42 (a) and (c) amended 29137
933.42 (a) and (b) amended 29137

Chapter XX
2013 Added; interim 28630

Chapter XXIII
2301.8 (e) revised 29137
2301.28 (a)(17) corrected 228

1984

15 CFR

49 FR Page

Chapter VIII
806.14 (f)(3) added 30059
806.15 (h) and (i) revised 3174

Chapter IX
904.108 Added; interim 1465
904.300—904.322 (Subpart D) Added; interim 1038
904.400—904.420 (Subpart E) Added; interim 1038
920 Removed 14721
921 Revised 26510
924.6 (g) revised; interim 1040
OMB number 13335
924.8 (a) revised; interim 1040
925 Removed 14721
929.10 (h) revised; interim 1041
OMB number 13335
929.11 (a) revised; interim 1041
935.9 (f) revised; interim 1041
OMB number 13335
935.11 (a) revised; interim 1041
936.8 (f) revised; interim 1041
OMB number 13335
936.10 (a) revised; interim 1041
937.8 (g) revised; interim 1041
OMB number 13335
937.10 (a) revised; interim 1041
938.8 (f) revised; interim 1041
OMB number 13336
938.10 (a) revised; interim 1041

Chapter XIV
Chapter XIV Chapter established 42698
1400 Added 42698

Chapter XXIII
2301 Revised 36600

1985

15 CFR

	50 FR Page
Chapter IX	
902.1 (b) revised	11995
904.500—904.508 (Subpart F) Added; interim	12782
922.40 Revised; interim	12785
923.11 (c)(2)(ii) revised	35213
Effective date deferred	46423
930.33 (c) revised	35213
Effective date deferred	46423
970.1104 Revised; interim	12785
Chapter XX	
2007 Revised; interim	19672

1986

(Correction document published January 10, 1986)

15 CFR

	51 FR Page
Chapter IX	
904.504 (b)(2)(A) through (C) correctly redesignated as (b)(2)(i) through (iii); (b)(3)(A) through (E) correctly redesignated as (b)(3)(i) through (v)	1249
904.506 (b)(2)(A) through (G) correctly redesignated as (b)(2)(i) through (vii); (d)(1)(A) and (B) correctly redesignated as (d)(1)(i) and (ii); (f)(1)(A) through (E) correctly redesignated as (f)(1)(i) through (v)	1249

○